

**Selections
from
THE JAINA LAW**

(Barrister Champat Rai Jain)



JAINA VIDYĀ SAMSTHĀNA
DIGAMBARA JAINA ATISĀYA KṢETRA ŚRĪ MAHĀVĪRAJI
RAJASTHAN

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CONTENTS

Prelusive	...
Tīrathaṅkara Vardhamāna Mahāvīra	...
Holy Blessing of Ācārya Vidyānanda Munirāja	...
Acārya Vidyānanda Munirāja addressing the Judges and Lawyers on the 'Jaina Law'	...
Financial Assistance	...
Introduction	(i-xvii)

PART I

Chapter I : Adoption and Sonship 1

- Who can adopt?
- Who can be adopted?
- The ceremony of adoption
- The consequences of adoption

Chapter II : Property

9

- Property not subject to partition
- Partition
- Partition during the life-time of the father
- Partition after the death of parents
- Jeshtamsi (the first born son)
- Disqualification from inheritance
- The ascetic's share
- The Rights of the Younger brothers in respect of education and marriage
- Mother's rights
- Rights of sisters
- The rights of the widowed sister-in-law
- Principles governing partition and re-union
- Rights in joint property
- Mode of partition

Chapter III : Inheritance

34

- The order of succession
- The King's obligation

Chapter IV : Stridhana (Woman's Property) 44

- Kinds of Strīdhana

Chapter V : Maintenance 48

- Persons entitled to maintenance

Chapter VI : Guardianship 52

- Persons entitled to the guardianship of minor boys and girls

PART II

Original Texts and Translation

I The Bhadrabāhu Saṁhitā	55
II The Vardhamāna Niti	83
III The Indranandi Jina Saṁhitā	95
IV The Arhan Niti	107

PART III

Jainism and Dr. Gour's 'Hindu Code' (Appendix A)	137
Tables of Cases (Appendix B)	174

PRELUSIVE

We feel great pleasure in placing the book 'Selections from the Jaina Law' in the hands of the readers. The selections have been made from the 'Jaina Law' written by the great luminary Barrister Champat Rai Jain. He wrote the 'Jaina Law' in 1925 in deference to the desire of the then British Administration to ensure that all sects and creeds in India be governed by their own laws. He looked into the available texts dating 9th century A.D. to 16th century A.D. and rightly felt that none of these texts contained the entire law. He realised that "whatever portions of these texts have survived is quite sufficient for our Jural understanding". Now in order to acquaint people at large with the salient features of the Jaina Law, the book 'Selections from the Jaina Law' has been made readily obtainable. The topics covered in this publication are : (i) Adoption and Sonship, (ii) Property, (iii) Inheritance, (iv) Strīdhana, (v) Maintenance and (vi) Gurdianship.

It will not be out of place to point out that Jaina Vidya Samsthana (Institute of Jainology) established by Digambara Jaina Atisaya Ksetra Sri Mahaviraji is actively engaged in presenting the multidimensional perspectives of Jaina Culture to the general public and scholars alike. In consonance with the spirit of the Atisaya Ksetra, this publication is being brought out for imparting authentic information to the readers in regard to various significant aspects of the Jaina Law under the heading 'Selections from the Jaina Law.'

It is of capital importance to note that the Jaina Law exhibits certain remarkabilities not found elsewhere. The Jaina Law pronounces that "females take the inheritance absolutely". "The wife appears in her full glory as the better half in the Jaina Law." "Even the son has no status in her presence." The author says that the effect of this healthy rule is that the son has got to be well behaved, obedient and a model of virtue to win the favour of the mother. "To invest the son with absolute ownership is to silence the mother's controlling voice effectively." Besides, "if the son

is hostile to Dharma and is incorrigible, Jaina Law would have him turned out and disaffiliated". Again "adoption is not made amongst the Jainas for spiritual welfare. The presence or absence of a son does not make a man spiritually meritorious' or otherwise". "If the adopted son be unworthy (wicked), given to evil ways, or opposed to religion, and does not reform, he should be turned out and disaffiliated."

We express our deep sense of gratitude to Ācārya Vidyānanda Munirāja who very kindly handed over the floppy of the book 'The Jaina Law' to Jaina Vidyā Smāsthāna, Srī Mahāvīrajī for making significant selections from the Jaina Law. His holy guidance in number of ways in presenting the book 'Selections from the Jaina Law' will prove to be beneficial, meaningful and relevant. Words are inadequate to express our gratefulness to Ācārya Śrī.

We are thankful to Shri Gyan Chandra Khinduka for going through the manuscript with deep understanding and giving us valuable and pointed suggestions. His interest in the publication of the book is admirable and encouraging. Our thanks

are also due to "Shri Ramchandra Premchandra Khinduka Charitable Trust" for rendering financial assistance towards this publication and also to Dr. Veer Sagar Jain for assisting us in the publication of this book.

We offer our thanks to the learned researches of the Samsthāna (Institute) and to M/s. Jaipur Printers Pvt. Ltd., for organising the publication of the book.

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INTRODUCTION

The Jaina Law is an independent part of Jurisprudence. Its original author, the first legislator, was Bharata Chakravarti, who was the eldest son of the first Tirthankara, Sri Rishabha Devaji. (See Indranandi Jina Samhita, 53-55.)

The whole of the Jaina Law was composed at one time, and is therefore, wanting in those marks which characterise the Judge-made Law, though it is not improbable that owing to the necessities of the community and the human intercourse slight changes, not affecting its basic principles, have been made in it from time to time.

The Jaina Law was originally a part of what is known as the Upasakadhyayana Anga which is now lost. Its existing sources mainly are the books which are mentioned below :

1. *The Bhadrabahu Samhita*, which, not being composed in the time of Sri Bhadrabahu

Swami who flourished about 2300 years ago, appears to be a much later work. Nevertheless it is several hundred years old. Probably it was composed between the Vikram Samvat 1657 to 1665, corresponding to 1601 to 1609 A.D. It is based on the Upasakadhyayana Anga. The name of the author is not known.

2. *The Arhan Niti*, this is a Svetambara work. The age of the author is not given in the book, but it does not appear to be an old one. In the colophon the author declares that he has reduced to writing what he had heard.

3. *The Vardhamana Niti*, this appears to have been composed about Vikram Samvat 1068, corresponding to 1011 A.D. by Sri Amitagati Acharya in the reign of Raja Munj. It contains several slokas which are identically the same as those of the Bhadrabahu Samhita, e.g., Nos. 30 to 34 which are entered in the Samhita at Nos. 55 to 59. From this circumstance it would appear that both these books were composed with the aid of some earlier book; and it would further appear that the Bhadrabahu Samhita, which was apparently composed about 325

years ago, is really based on a much older work possibly composed in the time of the great Bhadrabahu, the preceptor of Chandragupta Maurya of the B.C. days, as it professes to be, since the Vardhamana Niti could hardly be deemed to have been copied in a bigger work than itself.

4. *The Indranandi Jina Samhita*, this was composed by Vasunandi Indranandi. It is also based on the Upasakadhyayana Anga (Anga=limb of Scriptural lore). It is to be noted that the Anga Upasakadhyayana* is now lost and only some stray fragments of it have survived.

5. *The Adi Purana*, this was composed by Sri Jinasena Acharya in the ninth century A.D., and is about 1200 years old.

These are chiefly the Law Books which are traceable now, but none of them contains the entire Law. Still I think that whatever portion of it has survived, is quite sufficient for our jural understanding.

* For a description and list of the contents of this Anga, see *Outlines of Jainism* by J.L. Jaini.

In the past a long series of vicissitudes and persecutions drove the light of Jainism, behind the bars. When the British came, the Jains concealed their sastras and objected to their production in the courts. To a certain extent their action was justified, because in the courts the Scriptures of no religion are respected. The presiding officer at times and the court officials generally use saliva for turning over the leaves of the books, which must cause pain to a devout heart. But the remedy for this is not the withholding of sastras altogether. Everything must be done with due regard to the changed and the changing conditions, their dravya (substance), kshetra (place), kala (time), and bhava (conscious), to employ the terminology of the Jaina Siddhanta. The result of the non-production of their Scriptures by the Jains has been that the courts have now held that they (the Jains) have no Law Books of their own. (see Sheo Singh Rai v. Mussamat Dakho. I.L.R. I Allahabad 688, specially on page 700 and Harnabh Pershad v. Mandil Dass, I.L.R. 27 Calcutta, 379). And this is notwithstanding the

fact that as early as in 1873 A.D. the names of certain Jaina Law books were mentioned in the court decision (see Bhagwandass Tejmal v. Rajmul, 10 Bombay High Court Report, 249, on pages 255, 256); and even earlier than this in 1833 A.D. there was an allusion to Jaina works see (Chand 5 Select Rep. S.D. Bengal, 276). But the courts are not to be blamed for this; on the contrary they tried on each occasion to ascertain the Jaina Law or at least the Jaina customs, so that the disputes of the Jainas may be decided according to their own rules. Sir E. Montague Smith, in the course of the judgment of their Lordships of the Privy Council, in the case of Sheo Singh Rai v. Mussamat Dakho (I.L.R., I Allahabad 688) observed — “It would certainly have been remarkable if the courts had allowed the large and wealthy communities existing among the Jains, the privilege of being governed by their own peculiar laws and customs, when these laws and customs were, by sufficient evidence capable of being ascertained and defined; and were open to objection on grounds of public policy or

otherwise." In Premchand Pepara v. Hulaschand Pepara (12 Weekly Reporter, page 494) also there is an allusion to Jaina Law books. Probably the Pandits were consulted according to the old practice of the court. This case was decided in 1869 A.D.

The Hindus also had similar apprehensions with respect to their scriptures, but they proceeded with discretion. Unlike the Jainas, they did not conceal their law books, and did not lay obstacles in their printing and publication. The Jaina Mahasabha, on the contrary, has repeatedly passed resolutions against printing. The effect of this has been that the world has not yet known what Jainism is like, when it arose, what is its real teaching, what are the laws which the Jainas follow and what are their Law books. Rai Bahadur Babu Jugmander Lal Jaini, Barrister-at-law, and at one time Chief Justice of the Indore High Court, was the first to realise this difficulty. In 1908 A. D. he composed a book on the Jaina Law, which was published in 1916 by the enterprising Jaina Publisher,

late Kumar Devendra Prasad of Arrah. But even this little pamphlet remained incomplete owing to want of leisure to the talented author and the indifference of the Jaina community, the author contenting himself merely with the compilation of some of then existing books, and with a translation of one of them. He however, at the request of the Jaina Mitra Mandal of Delhi, translated the Vardhamana Niti and the Indranandi Jina Samhita, which I have freely made use of in this compilation with his kind permission. Even after this the Jainas remained apathetic as before, except in the year 1921 A. D. when Dr. Gour brought out his 'Hindu Code' and described the Jainas as Hindu dissenters. Then there was some opposition to the Hindu Code; a committee, known as the Law Committee, was formed which comprised both qualified (English-knowing) lawyers as well as Pandits and learned men. This Committee began its work well, but in the end it also failed to accomplish its object, owing to various causes, such as the difficulty of bringing together its Members from distant places, and the like.

Such being the state of the community today there is nothing surprising if the Calcutta High Court enforced the Hindu Law on the Jainas in 1867 A. D. (Mahabeer Pershad v. Mussamat Kundun Koer, 8 Weekly Reporter page, 116) Chotay Lal v. Chunnoo Lal, (I. L. R., 4 Calcutta, 744) Bachebi v. Makhan Lal (I. L. R., 3 Allahabad, 55), Periammani v. Krishnasami (I. L. R., 16 Madras, 182), and Mandit Koer v. Phool Chand (5 Calcutta Weekly Notes 154) were all decided according to the Hindu Law and wrongly in as much as the Jaina practice was held not to have been proved. Even the cases that were correctly decided e.g. Sheo Singh Rai v. Dakho (I. L. R., Allahabad, 688 P. C.); Ambabai v. Govind (I. L. R., 23 Bombay 257); Lakhmi Chand v. Gattobai (I. L. R., 8 Allahabad 319); Manik Chand Golecha v. Jagat Sethani Pran Kumari Bibi, (I. L. R., 17 Calcutta 518); Shimbu Nath v. Gyan Chand (I. L. R., 16 Allahabad 379) correctly decided in part; Harnabh. Pershad v. Mandil Dass (I. L. R., 27 Calcutta 379); Manohar Lal v. Banarsi Dass, (I. L. R., 29 Alld. 495); Asharfi Kunwar v.

Rupchand (I. L. R., 30 Allahabad 197); Rupchand v. Jambu Pershad. (I. L. R., 32 Alld. 247 P. C.); Rukhab v. Chunni Lal Ambushet (I. L. R., 16 Bombay 347); Mussamat Sano v. Mst. Indranibahu (78 Indian Cases 461 Nagpur); Mojilal v. Mst. Goribahu (Second Appeal Nos. 416, S. B. 1897 Nagpur), referred to in 78 Indian Cases Page 461, were in reality decided wrongly inasmuch as they were disposed of according to the rules of the Mitakshara Law as modified by special customs, not according to the Jaina Law as they should have been. The same remark applies to the subsequent cases. Nevertheless the demand of the administration of Justice and the duty of the courts is clear, that the cases of the Jainas should be decided according to the Jaina Law or the Jaina customs. This compilation is prepared in the hope that the Jaina Law may once again raise its head independently, and the Jainas be enabled to observe the rules of their Dharma properly in obedience to their own Laws.

The question, what is the harm if the Jainas

are subjected to the Hindu Law*?, does not arise, and should not be raised. We might similarly ask what is the harm if the Hindu Law be enforced against the Mahommedans or the Christians?. One may not be able to show any particular damage in the worldly sense by this kind of subjection, but all lovers of self-determination are aware that every system is based upon one particular angle of vision and the introduction of a foreign element into its midst is destructive of all liberty of thought

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- * A single instance should suffice to illustrate the nature of the harm that will accrue to the Jaina community if not allowed to be governed by their own laws. The son in a Jaina household is placed in a subordinate position, and postponed before the mother, who takes the paternal property as absolute owner. She is at liberty to give it away to any one she likes and cannot be stopped by any one except as regards the maintenance of small children. The effect of this healthy rule is that the son has got to be well behaved, obedient and a model of virtue to win the favour of the mother. To invest the son with absolute ownership is to silence the mother's controlling voice effectively. The insignificant percentage of criminals among the Jainas-the lowest as compared with other communities-is a glowing tribute to the wisdom of the Jaina Legislator. If the Jainas are subjected to a system of Law in which the mother's controlling voice is silenced or deadened, the same excellence of moral goodness may not be expected from them.

and life and can only cause confusion and mischief. And, it will not do to say that the Jaina Law can be enforced in the shape of special customs, so that matters may be allowed to continue as they have done hitherto. Every lawyer knows how difficult it is to prove a custom. Hundreds of witnesses have to be examined and instances to be established which are beyond the means of ordinary litigants and outside the scope of small cases. The chance of miscarriage of justice is also very great, as is known to have happened more than once. The community, too, lives in a condition of insecurity, since nobody knows what will be the decision of the Court of Justice on a question of custom to be proved by oral evidence. This sense of insecurity is liable to become aggravated by wrong adjudication, since that means a pronouncement of law contrary to the actual prevailing practice. In ordinary cases miscarriage of justice, although reprehensible, may not matter much, as only the parties are affected by it. But in regard to general customs the whole community is affected by such judgments.

Some people think that Jainism itself is a branch of Hinduism, and the Jaina Law is the same as the Hindu Law. These men regard the Jainas as Hindu dissenters. But the Jainas cannot be Hindu dissenters. Whenever there is a division in a religious community the bulk of the creed remains the same, the differences arise-only in respect of a few matters. Here, if you compare Hinduism with Jainism, the differences are very great; their similarity is only in respect of a few particulars, excepting those matters which concern the ordinary mode of living. Even the ceremonies which appear to be similar are in reality different in respect of their purport, if carefully studied. The Jainas regard the world as eternal; the Hindus hold it to have been made by a creator. In Jainism worship is not offered to an eternal and eternally pure God, but to those Great Ones who have realised their high ideal and attained to Godhood themselves; in Hinduism worship is performed of one Lord who is the creator and the ruler of the world. The significance of worship in Hinduism is also not the same as that in Jainism. In Jainism it is a kind of

idealatory that is practised; there is no offering of food and the like; nor is a prayer made to the Deity for boons. In Hinduism the attainment of the object is by the will of certain divine beings who are to be propitiated. In respect of their scriptures too, there are great differences between Hinduism and Jainism. Not one of the Books of the Hindus is accepted by the Jainas nor do the Hindus accept a single sastras (Scripture) of the latter. The contents too, of the Scriptures of the two religions differ. Not one part of the four Vedas and the 18 Puranas recognised in Hinduism is included in the Jaina scriptures. Nor is any part of the Sacred Books of the Jainas included clearly or expressly in the Hindu Books. The matters in respect of which there seems to be similarities between the Jainas and the Hindus are merely social; their significance, wherever they have a religious bearing is divergent. Ordinary similarity in respect of social matters is to be expected amongst communities that have been living together for a longtime, especially when inter-marriages take place between them, as amongst the Jainas and the

Hindus. There are several social customs which are common to the Jainas, the Hindus and the Mahommedans, but they have no special significance with reference to religion. Many customs are adopted, especially in imitation of kings and potentates, in one community from another. In times of calamity changes are sometimes effected in the religious practices to preserve religion and life. In the past the Hindus committed many acts of oppression against the Jainas. Jaina Saints and householders were ill-treated* and some of them were even put to death. Under these circumstances the Jainas for their own shelter began to employ the Brahmans for the performance of their social ceremonies, so as to preserve themselves. The practice has continued and even today Brahmans are employed by them to assist in the performance of marriage and other ceremonies at various stages. But religious matters are quite different; they are

* The kind of ill-treatment is referred to in several places. The account of an epigraph on the columns of a Hindu temple bears eloquent testimony to the spirit of persecution and hatred that prevailed in the past. (see *Studies in South Indian Jainism*, part 2, pages 34-35)

not touched. Ignorant and half-enlightened men at first started regarding Jainism as a branch of Buddhism. But today hardly any one falls into that error.

Today we have to deal with another band of hasty thinkers who have made up their minds to call Jainism a branch of Hinduism; but this delusion will also soon be removed when really learned men turn to the study of the subject. There are great differences between the Hindus and the Jainas in the department of Law. Adoption is not made amongst the Jainas for spiritual welfare.¹ The presence or absence of a son does not make a man spiritually meritorious or otherwise². Many of the Tirthankaras were sonless, and yet they attained to the highest and the most supreme status. On the other hand, many people descend into hells although they have sons ! It is not and cannot be the teaching of Jainism that a person can benefit the soul of another after his death by his own actions or presents.

1. i. Sheo Kuar Bai v. Joo Raj 25 C. W. N. 273.

ii. Manakchand v. Munna Lall, 95 P. R. 1909-4 I.C. 844.

2. Bhadrabahu, 8 and 9.

As regards the rights of female heirs also there are wide differences between the Hindu and the Jaina Laws. Under the Jaina Law, females take the inheritance absolutely; according to the Hindu Law they are entitled only to a life estate. Absolute ownership according to the Hindu Law only vests in the male heirs. The wife appears in her full glory as the better half in the Jaina Law. Even the son has no status in her presence. He is entitled under the Jaina Law to share only in the estate of the grandfather. In the father's immovable property he has only the right of maintenance, and the father has the absolute power over his movable property. Further, Hindu Law favours jointness; but Jaina Law, while not condemning jointness, recommends separation, so that there may be increase of Dharma (merit). Even jointness is more in the nature of a tenancy in common under the Jaina Law than like a joint estate under the Mitakshara. If the son is hostile to Dharma and incorrigible, Jaina Law would have him turned out and disaffiliated. But this cannot be done under the Hindu Law. There are other points of difference which reveal themselves between the Laws of the

Hindus and the Jainas. It is thus quite erroneous to say that Jainism is a branch of Hinduism, or that Jaina Law is the same as the Hindu Law.

In the Part III Appendix A, I have included an article written in connection with Dr. Gour's Hindu Code, leaving out the portion which has no bearing on the present subject, and adding some further notes that are intended to trace the historical origin of the doctrine of applying the Hindu Law to the Jainas.

In conclusion, I will appeal to those fanatics of scriptural veneration who are still opposed to the printing of the Sacred Lore. The times are such that we cannot allow our Scriptures to remain unpublished for a single day longer. If they are opposed to the production in the court of the sastras from the temple Reading Table - and I am myself averse to the idea - then they should get their Scriptures printed, so that the printed copies may be used everywhere else, and the errors prevailing among men in regard to the Jaina Religion, Jaina History and Jaina Law be removed.

Hardoi
12th July, 1925.

C. R. Jain

**SELECTIONS FROM
THE JAINA LAW
(PART I)**

CHAPTER I ADOPTION AND SONSHIP

In Law only two kinds of sons have been recognised, the aurasa and the dattaka. The aurasa is the son born of one's married wife, and the dattaka, the adopted one.

Who can Adopt :

If there be no natural son¹ (aurasa) or he be dead² a person can make an adoption to himself³. And if the natural son has been turned out and disaffiliated, on account of wickedness, a boy may be taken in adoption⁴. But if the son has died before marriage then no son can be adopted to that unmarried son. If the adopted boy has been turned out on account of viciousness, it is permissible to adopt another son in his place.⁵

1. Bhadrabahu 41; Vardhamana Niti 34.

2. Bhadrabahu 59; Vardhamana Niti 34.

3. Bhadrabahu 41; Vardhamana Niti 34.

4. Arhan Niti 88 and 89.

5. Vardhamana Niti 28. and Arhan Niti 88 and 89.

On the death of a person his widow may adopt⁶. No authority is necessary for adoption by a widow⁷. If the mother-in-law and the daughter-in-law be both widows, then the widowed daughter-in-law is the fit one to adopt⁸, provided that she has succeeded to the estate. The point is that the person in possession of the estate as an heir alone is entitled to take a son in adoption. He who has not obtained the estate cannot deprive the rightful heir of the property that has vested in him (or her as the case may be.) The widowed daughter-in-law should adopt with the permission of her mother-in-law⁹. But this seems to be only a moral precept rather than an obligatory condition, except in the case where the mother-in-law has succeeded to the estate. In such a case her consent will be interpreted to mean a surrender in favour of

6. Vardhamana Niti 28-30; Arhan Niti 57 and Bhadrabahu 75.

7. Asharti Kunwar v. Rupchand, I.L.R., 30 Alld. 197. Sheo Kunwar v. Jee Raj, 25, C.W.N., 573 P.C.; Jee Raj v. Sheo Kunar, 66, I.C.-65; Manakchand v. Muamalat 95, P.R. 1909, 4, I.C. 844. Manohar Lal v. Banarsi Das, 29 Alld. 495.

8. Bhadrabahu 75; Arhan Niti 110.

9. Bhadrabahu 116.

the son to be adopted by the widowed daughter-in-law. If the adopted boy has died unmarried, no one can make an adoption to him¹⁰. His property may be given, at the pleasure of his widowed mother, to her son-in-law or be spent in feasting the people of the community or on religious works¹¹. The idea is that the widowed mother would succeed to the estate as absolute owner. She would be entitled to take a son in adoption to herself in such a case¹², that is to say, in place of her husband, i.e. as the son of her husband¹³, not for that adopted boy. In a case in which the rule of Hindu Law was applied to the Jaina parties the right of the widow to make a second adoption on the death of the first adopted son was held valid¹⁴.

Who can be Adopted :

That which entitles a man to be considered as having a son, in other words, the first-born

10. Bhadrabahu 59; Arhan Niti, 121, 122, 124 and Vardhamana Niti 30-32.

11. Bhadrabahu 58; Arhan Niti, 123; Vardhamana Niti 33 and 34.

12. Vardhamana Niti 34; See also Peria Ammani v. Krishnasami I. L. R. 16 Madras 182.

13. Arhan Niti 124.

14. Lakhmichand v. Gatto Bai, I L.R., 8 Alld, 319.

son should not be given in adoption¹⁵ because by the first born son a man is termed a father¹⁶. In the world the existence of a son is regarded as a great blessing¹⁷. Only those who have accumulated much merit obtain many sons who serve their father¹⁸. Like the Hindu Law, the prohibition is probably not obligatory, and actual practice also does not appear to be in agreement with it¹⁹. The adopted son should not be older in age to the adoptive mother²⁰. There is no restriction of adoption to unmarried boys in the Jaina Law²¹.

The husband's younger brother, his (the husband's) brother's son, any boy belonging to the husband's family²² and daughter's son²³ may be adopted; but the preference will be in the

15. Arhan Niti, 32.

16. Bhadrabahu, 7.

17. Bhadrabahu, 1; Arhan Niti, 125.

18. Arhan Niti, 13.

19. Gour's Hindu Code, Second Edition, 382.

20. Bhadrabahu, 116; but see *Manakchand v. Munnalal*, 95, Punjab Record 1909-4, I.C. 844.

21. Indranandi, 19.

22. Indranandi, 19; but see *Manakchand v. Munnalal*, 95, Punjab Record 1909-4 I.C. 844.

23. *Humabae v. Punjabbaee*, 5 W. R. 102 P. C.; *Sheo Singh Rai v. Mst. Dakho L. L. R.*, L.Ald. 688, P. C.

order in which they are mentioned. In their absence any one from the husband's Gotra may be adopted²⁴. A grown up person, even a married man and one having children may be adopted²⁵. The adoption of a daughter's and a sister's son is also permitted²⁶.

The Ceremony of Adoption :

Actual giving is necessary²⁷. But if this be physically impossible giving in any other form will suffice²⁸. But the giving is essential²⁹. A document should be executed and registered evidencing the transaction if possible. In the morning the adoptive father should proceed to the temple and perform the ceremony of the opening of the door and the worshipping of the

24. Arhan Niti, 55-56.

25. 1. Hassan Ali v. Nagamal, 1 Alld. 288 ;

2. Manakchand v. Munnalal, 95, P.R. 1909-4 I.C. 844.

3. Manohar Lal v. Banarsi Dass, 29, Alld. 495;

4. Asharfi Kuar v. Rupchand, 30 Alld. 197.

5. Jamunabai v. Juharnal, 26, I.C. 81.

26. 1. Lakhmichand v. Gatto, 8 Alld. 919.

2. Hassan Ali v. Nagamal, 1 Alld. 288.

27. Bhadrabahu, 49-51. ; Arhan Niti, 59-65; Gour's Hindu Code, second edition, page 396.

28. Sheo Kuar v. Jeoraj 25, C.W.N., 273

29. Sheo Kuar v. Jeoraj 25, C.W.N., 273

Jamunabai v. Juharnal, 56, I.C. 81.

Jeoraj v. Sheo Kuar, 66 I.C. 65.

Tirthankara. (Deity). He should during the day collect the members of his family and community, and celebrate the event performing all necessary ceremonies, as if a son were born to him. It would seem that the worship of the Tirthankara and the actual giving are the essential matters, though, in practice, if actual giving has taken place it will be probably regarded as sufficient. According to the Hindu Law no one except the natural father or the mother of the boy can give a boy in adoption, but there is no such restriction under the Jaina Law. Even an orphan can be adopted among the Jainas under their Law³⁰. The boy's own consent if he be of age, or the consent of a relation of his in case of his minority will do³¹. If the mother and the members of the family are agreed, a boy may be given in adoption³².

When a widow adopts a son she should put him in possession of the estate and should take to religious observances herself³³.

30. Gour's Hindu Code, 2nd edition, page 367.

Parsshotam v. Munnafal, 95, P.R. 1909-4, I.C. 844.

31. Manakchand v. Munnafal, 95, P. R. 1909-4, I. C. 844.

32. Asharfi Kunwar v. Rupchand, 30, AllJ. 197.

33. Bhadrabahu, 55 and 66.

The Consequences of Adoption :

The adopted boy is like the natural son³⁴. During the life-time of the father and the mother, the adopted son has no right to sell, or mortgage their property or the property of the grandfather³⁵.

If the adopted son be unworthy (wicked), given to evil ways, or opposed to religion, and does not reform, he should be turned out and dis-affiliated, through court, whether he may be married or not³⁶. He shall then have no rights left³⁷. This shows that the Jaina Law favours a declaratory suit for dis-affiliation, in the decision of which due regard will be paid to the natural equities of the case. The language of the *Arhan Niti* in this connection is wide enough to include the natural son³⁸. If the adopted son behave affectionately towards the parents and is obedient to them then he is regarded equal to the natural son³⁹. If a natural

34. *Arhan Niti*, 58.

35. *Bhadrabahu*, 60.

36. *Bhadrabahu*, 52-54; *Vardhamana Niti*, 25-29; *Arhan Niti*, 86-88.

37. *Bhadrabahu*, 54; *Vardhamana Niti*, 27; *Arhan Niti*, 88.

38. *Arhan Niti*, 86-88 and 95.

39. *Arhan Niti*, 58.

son is born after a *koy* has been taken in adoption then the adopted son should be given a quarter of the property and separated⁴⁰.

The natural son is the son entitled to the turbans⁴¹. If the ceremony of binding a turban has already taken place on the adopted son, and then a natural son is born, the latter will not be entitled to the "turban" but will equally share the property with the adopted son. Both the natural and the adopted sons are not entitled to do anything special (out of the ordinary course) against the will of the mother, even if they be obedient, respectful, virtuous, and engaged in the study of knowledges⁴². This principle would seem to be applicable to the period of minority of the son, or to the property which the mother has obtained as an heiress and which the son cannot deal with independently. It would appear to be merely directory in all other cases.⁴³

40. Bhadrabahu, 93-94. Vardhamana Niti, 5-6. Arhan Niti, 67-68. Rukhsab v. Chunnimal Ambusact, I. L. R., 16, Bombay 347.

41. Bhadrabahu, 93-94. Vardhamana Niti, 5-6. Arhan Niti, 67-68.

42. Vardhamana Niti, 18-19; Arhan Niti, 83-84.

43. Arhan Niti, 104.

CHAPTER II

PROPERTY

The Jaina Law recognises two kinds of property, movable and immovable. Whatever is fixed to its place and is unmovable is immovable, as for instance a house, a grove etc. Whatever passes from hand to hand easily is movable property¹. Both kinds of property are liable to partition but there is a recommendation in favour of keeping the immovable property undivided², inasmuch as it is a source of respect and status.

With respect to the nature of inheritance the property is either obstructed or unobstructed. The latter of these is the property which has descended in a direct line from the father to the son or from the grandfather. The former is the property which is inherited from collaterals, the uncle and the like³.

1. Bhadrabahu, 14; Arhan Niti, 3-4.

2. Bhadrabahu, 16 and 112; Arhan Niti, 5.

3. Arhan Niti, 2; Indranandī, 2.

Property not subject to partition :

The following kinds of property are not liable to partition :

1. Whatever the father has acquired by his own merit⁴, e.g., a Raj;
2. Whatever any co-sharer has earned without the aid of or detriment to the ancestral estate⁵, e. g., gains of science.
3. Whatever a co-sharer has obtained from a friend or from the relations of his wife⁶.
4. Treasure trove⁷.
5. Trophies of war and property obtained by service⁸.
6. Whatever ornaments and the like, the father has given during his life to the brothers or their wives⁹.
7. Stridhan¹⁰.
8. The property lost in the life of the father and recovered without the aid of the joint

4. Bhadrabahu, 100.

5. Bhadrabahu, 102-103; Vardhamana Niti, 37-38.

6. Indranandi, 21; Arhan Niti, 133-135, Bhadrabahu, 102; Vardhamana Niti, 37-38; Arhan Niti, 133-135.

7. Bhadrabahu, 102.

8. Vardhamana Niti, 37-38; Arhan Niti, 133-135.

9. Arhan Niti, 132.

10. Bhadrabahu, 101; Vardhamana Niti, 39-45; Indranandi, 47; Arhan Niti, 136-143.

estate by one of the brothers^{10a}. But in the immovable property the person thus recovering the estate will get only a fourth share over and above his ordinary share¹¹.

Partition :

Unlike the Hindu law, the Jaina law recommends partition because it leads to the increase of Dharma (virtue), and enables every brother separately to accumulate merit to himself^{11a}.

Leaving aside the property, which is not subject to partition, the rest is liable to partition in accordance with the rules of law and special custom, if any, amongst the co-sharers¹². The impartible property of the father will devolve onto the eldest son alone¹³. The son who is addicted to theft and excessive sense-indulgence and is otherwise vicious can be deprived of his share of inheritance through court¹⁴. The younger brothers engaged in the

10a. Vardhamana Niti, 37-38; Arham Niti, 133, 135.

11. Indranandi, 20. (The same is the view under the Mitakshara Law)

11a. Bhadrabahu, 13.

12. Indranandi, 45; Bhadrabahu, 4.

13. Bhadrabahu, 100.

14. Arham Niti, 86, 87 and 120.

acquisition of knowledge should be given some portion (for their support) out of the self-acquired property (e.g., *Īaj*) of the father, which has devolved on the eldest brother¹⁵. But the other brothers will be entitled to share in the remaining (partible) property equally, so as to be able to enter some profession or trade¹⁶.

Partition during the life-time of the father :

If the property is the self-acquired property of the father, the sons have no right to claim a partition. Whatever the father may give in such a case, they have to be content with that. During the life-time of the mother, her property can only be taken by the sons with her consent.

Partition after the death of parents :

After the death of parents, all the brothers may divide the property equally¹⁷. The debts, if any, should be paid first; thereafter the remaining property should be divided¹⁸.

15. Bhadrabahu, 98.

16. Bhadrabahu, 99.

17. Bhadrabahu, 4; Varadhamana Smṛti 8; Arhan Niti, 15.

18. Bhadrabahu III; Arhan Niti, 36.

Jeshtamsi :

The first born son is considered as worthy of special regard under the Jaina law¹⁹. Leaving aside the ancestral property the eldest son alone takes the self-acquired property of the father. The remaining sons, treating him as the father, live with him²⁰. This rule is applicable to a Raj or big estate. Even in the case of a Raj where all the younger brothers are obedient to the elder one, the latter will be responsible for their support and maintenance. Such is, indeed, the legal inference. At the time of partition a portion (e. g., the 10th), according to the nature of the estate, is kept aside for the eldest son. The rest of the property is divided equally among all the sons. In this way the eldest son gets a share equal to that of the other brothers and a little more for his right of Jeshtamsi²¹. If the younger brothers are minors they will be left under the protection of the elder, who will take care of their property²². The ancestral property is to be divided equally among the

19. Bhadrabahu 6.

20. Bhadrabahu 5.

21. Bhadrabahu, 17.

22. Arhan Niri, 21.

brothers²³. The division of the grandfather's property is to be made per stripes, i.e., according to the number of the sons, the grandsons dividing amongst themselves, the shares of their respective fathers equally²⁴. If a person dies after partition, leaving no nearer heir, his share will be divided among his brothers and nephews²⁵.

If after the partition, the brothers are united and again divide their property, no right of Jeshtamsi will be recognised at that time²⁶.

If twins are born at a time, the child first born will be regarded as the eldest son²⁷. If a girl is born first and then a boy, even then the latter is regarded as the eldest born son²⁸. Cattle may also be divided, but if any co-sharer is unable to maintain them, the other co-sharers may appropriate them without a doubt²⁹. Probably this rule will not be enforced at the present day, as the price of cattle has gone up

23. Indranandi, 24.

24. Arhan Niti, 99.

25. Vardhamana Niti, 52; see also Arhan Niti 90-91.

26. Bhadrabahu, 104-105.

27. Bhadrabahu, 22; Arhan Niti, 29.

28. Bhadrabahu, 23; Arhan Niti, 30.

29. Bhadrabahu, 18.

considerably. Perhaps in the past also the rule applied, only where a co-sharer was, unable to feed and maintain his cattle or abandoned them without asking anything from any one in lieu thereof. In such a case naturally there will be incurred no liability for compensation by the taker of the cattle.

Disqualification from inheritance :

The following persons are considered dis-entitled to share in the property :

1. The person suffering from congenital impotence or some other incurable disease³⁰.
2. He, who is persistently opposed to the rules of righteous living³¹.
3. The lunatic, the lame, the blind, the mean, the hunch-backed³².
4. He, who has been out-casted, the cripple; he, who is determinedly opposed to his parents; he, who is on the point of death, the dumb, the deaf; he, who is subject to

30. Bhadrabahu, 69; Arhan Niti, 92-93; Indranandi, 41-42; Vardhamana Niti, 53.

31. Indranandi, 45.

32. Bhadrabahu, 70; Vardhamana Niti, 53; Arhan Niti, 93-94; Indranandi, 41-42.

fits of excessive (uncontrollable) anger; and he, who is wanting in a limb³³.

The above are regarded as entitled to maintenance but not to a share³⁴. Nevertheless, if their malady is cured, they will receive the share³⁵. Otherwise the share, that should have gone to them, would go to their widows or sons, if they are free from disqualification³⁶, or to the daughter's son³⁷. And of course, a disqualified heir does not forfeit his personal property on account of the disqualification (see Bhadrabahu, 103) The person, who has no desire to succeed, will not be given a share³⁸. And he, who is addicted to the use of forbidden articles, e.g., meat, will also be deprived of the inheritance³⁹. Probably, this will be dependent on the decree of the court and very likely under the modern conditions, the rule will be regarded as merely a directory one.

33. Arhan Niti, 92-93; Indranandil. 41, 42 and 45.

34. Arhan Niti, 9; Indranandil. 10, 41, 42 and 43.

35. Arhan Niti, 94; Indranandil. 41.

36. Arhan Niti, 94.

37. Indranandil. 44.

38. Indranandil. 10.

39. Indranandil. 42.

The Ascetic's share :

If before partition a person has renounced the world then at the time of partition Stridhana will be left out of account and the shares will be calculated as if he were present, and his share will be given to his wife⁴⁰. If he has left (only) a son he will naturally take the place of his father. If a person dies without marrying, or becomes a Sadhu, his share will be taken by his brothers and nephews according to law⁴¹. If he dies after partition, his share will be taken by his brothers and nephews equally⁴². According to the Bhadrabahu Samhita the sister is also entitled to a share. But probably the sister of this sloka is only the unmarried sister to provide for whose marriage is the pious obligation of the brothers. The share to be taken by her is said to be equal to that of the brother, which undoubtedly is due to the necessities of a poetical composition ; for otherwise to give an equal share to the sister is against the rule. It may well be that this marks the limit of the provision for her marriage.

40. Bhadrabahu, 84; Vardhamana Niti, 48; Arhan Niti, 90.

41. Arhan Niti, 91.

42. Bhadrabahu, 106; Vardhamana Niti 52.

The Rights of the younger brothers in respect of Education and Marriage:

After marrying the younger brothers, whatever is left of the property, the brothers may divide it equally among themselves⁴³. Marriage in this connection includes education also under the general terms employed in the Arhan Niti.

Mother's Rights :

After the death of the father if a partition takes place the mother is entitled to a share equal to that of the sons⁴⁴. As a matter of fact it is laid down that she should receive a little more than a share so that she may be able to maintain the dignity and position of the family⁴⁵. In this way if there are four sons and the widow, five shares will be made of which the mother will receive one and the rest will be given, one each, to the four sons. How much more should the mother receive, is not fixed; but the Arhan Niti provides that if there be a

43. Vardhamana Niti, 7; Arhan Niti, 20.

44. Bhadrabahu, 21; Vardhamana Niti, 10; Indranandi, 27.

45. Bhadrabahu, 21; Vardhamana Niti, 10; Indranandi, 10; Arhan Niti, 28.

partition after the death of the father the brothers should give a half out of their shares to their mother⁴⁶. Thus if there are 4 brothers, each getting 25 paisa, the mother's share will be 4 times half of 25 paisa, i. e., $2 \times 4 = 50$ paisa. During the life-time of the father the mother should be given one share at the time of partition⁴⁷. She becomes entitled to a share on the birth of a son⁴⁸. The share which has been given to the mother is to be divided on her death by the brothers in equal shares amongst themselves⁴⁹.

Rights of Sisters :

In the property left by the father after separation, the brother and the unmarried sister have equal rights. If there be two brothers and one sister the property should be divided into 3 equal shares⁵⁰. The elder brother should support the younger sister as he would the younger brother⁵¹. She should be married in

46. Arhan Niti, 28.

47. Arhan Niti, 28.

48. Indranandi, 25.

49. Arhan Niti, 28; Bhadrabahu, 21; Vardhamana Niti, 10.

50. Indranandi, 27-28.

51. Indranandi, 28.

a suitable way⁵². It would seem that the allotment of a share to the sister is intended for her maintenance and provision for marriage; because otherwise the sister is not entitled to a share in the presence of the brother. If a brother dies after partition the ancestral property left by him should be divided by his brother and sister in equal shares⁵³. This would be the case if the deceased has left no widow and no son. The sister would here be the unmarried sister, because she has a right to be supported and to have the expenses of her marriage defrayed out of the ancestral property. This claim is apparently not enforceable against property that is an obstructed inheritance, e.g., that obtained from a collateral branch.

The Rights of the widowed Sister-in-law :

The widow of a deceased brother receives the share of her husband, and is entitled to claim a partition against the surviving brothers of her husband⁵⁴. If she wishes to adopt a boy

52. Indranandi, 28.

53. Bhadrabahu, 106.

54. Arhan Niti, 131; Ghisanmal v. Harak Chand (Oudh) select cases (No. 43), P. 34.

she has a right to do so⁵⁵. But at the time of the partition, the widow of a separated brother has no rights. If one of the brothers has renounced the world and taken to Sanyasa his wife will be entitled to receive his share at the time of partition⁵⁶.

Principles governing partition and re-union:

On the separation of one co-sharer the separation of all is effected⁵⁷. Before partition all the brothers are considered joint. But after partition any number of brothers may re-unite⁵⁸.

If after separation a brother is born who was in the mother's womb at the time he will be entitled to a share; and his share will be determined after taking an account of the income and expenditure since the partitions⁵⁹. Ordinarily the sons born after a division have no right to have the partition reopened. They are only entitled to the shares of their father⁶⁰.

55. Arhan Niti, 131.

56. Bhadrabahu, 84; Vardhamana Niti, 48; Arhan Niti, 90.

57. Arhan Niti, 130.

58. Bhadrabahu, 104-105.

59. Indranandi, 26; Arhan Niti, 37.

60. Arhan Niti, 36; Bhadrabahu, 109.

According to the Hindu Law if the father has reserved no share to himself at the time of partition and a son is born to him afterwards who is without the means of support, then he is entitled to receive a share from his separated brothers⁶¹. Probably the same is the significance of the 26th sloka of the Indranandi Jina Samhita, specially when read along with the 27th. Taken together they seem to suggest as the condition of their applicability the circumstance that the father has given away a part of his property and divided the rest amongst his living sons.

Rights in joint property :

The father is the principle owner of ornaments, cattle, grain and other movable property⁶². But neither the father nor the grandfather is the (absolute) owner of the immovable property⁶³. In other words they do

61. Gour's Hindu Code 2nd. edition, page 752; Ganpat v. Gopal Rao, 23 Bombay, 636; Chengama v. Muniswami, 20 Madras, 75.

To a certain extent this view is also supported by the decision of the Privy Council in the case of Bishenchand v. Asmaida I. L. R. 6 All. 560 especially at 574-575 P. C.

62. Indranandi, 4 Arhan Niti, 6.

63. Indranandi, 4. Arhan Niti, 6.

not possess the power of disposal over it. The reason is this that a person who introduces hungry mouths into the world cannot be allowed to deprive them of the source of their nourishment.

During the life of the grandfather no one can take his immovable property, but all the members of the family may spend (or use) the movable property according to their needs⁶⁴. If a person wishes to give away the ancestral property to his sister or the sister's daughter, his son can object to the gift⁶⁵. Without the consent of the son, the father has no right to give away the family property to any one⁶⁶. The joint ancestral property cannot be alienated without the approval of the brothers⁶⁷. Nor can it be given to one's daughter, daughter's son, sister or relations of the mother or wife⁶⁸. Even the immovable property and the cattle, which a person has acquired before the birth of a son, cannot be alienated by him when a son is born

64. Indranandi, 5.

65. Bhadrabahu, 91.

66. Bhadrabahu, 91-92; Arhan Niti, 96.

67. Arhan Niti, 96; Vardhamana Niti, 49, 50 & 51.

68. Vardhamana Niti, 49, 50 and 51.

to him⁶⁹. Because all the children that have been born or conceived, whether they be entitled to claim a partition or not, are entitled to maintenance out of it⁷⁰. Under the Hindu Law the right of maintenance cannot be enforced against the self-acquired property of the father, after the attainment of maturity by the son, though it can be enforced against the ancestral property⁷¹. The same is the view of the Jaina Law under which the sons do not always succeed even to the estate of the father, sometimes the mother and at times the elder brother alone taking the entire inheritance. The immovable property of the family cannot be alienated in the presence of persons entitled to maintenance, born and unborn, even for religious purposes, pilgrimage or gift to friends⁷². If there be no other objector the wife has a right to object whether the alienation be

69. Indranandi, 6; Arhan Niti, 27.

70. Arhan Niti, 9-10.

71. Gour's Hindu Code 2nd Edition Page 472; Ammakannu v. Appu (11 Madras 91.)

72. Indranandi, 7-8; 'The son has a right to maintenance against the property in the hands of the mother which she has inherited from her husband (Arhan Niti, 126).

for a good purpose or otherwise⁷³, because she, too is entitled to be properly maintained out of the family property.

The mother, the father, the brothers etc., all joining may transfer the property⁷⁴. If the children are minor the father may alienate the property for a necessary purpose, i. e., for a legal necessity⁷⁵. The case with inherited property in the possession of the mother is the same: she can alienate it subject to the restrictions imposed on the right of the father, during the minority of the children. The father has a right to spend out of the joint as well as the divided property for religious and family necessities even without the consent of the sons⁷⁶.

In the grandfather's estate whether, it is movable or immovable; the father and the son are equal co-sharers⁷⁷. The son is the owner of the father's inheritance (in the absence of the grandson) and may spend it in any way he

73. Vardhamana Niti, 51; Arhan Niti, 96.

74. Indramandī, 8-9.

75. Arhan Niti, II.

76. Bhadrabahu, 62.

77. Arhan Niti, 97; Indramandī, 215.

pleases⁷⁸. Because there is no one to stop him from doing so⁷⁹. The son has no right to spend (alienate) the movable property of the mother, which she may have entrusted to him for trade or management⁸⁰. During the life-time of the parents, the adopted son has no right to alienate their or the grandfather's property⁸¹. The same rule applies to the natural son⁸². But they have a right of partition in the grandfather's estate⁸³. With respect to his non-ancestral property, the father has the right to make a testamentary provision for his widow and for the management of his property, whether there be sons or not⁸⁴.

After partition every co-parcener acquires the right to dispose of his share⁸⁵. The widow, too, may deal with the property inherited from her husband in any way she pleases ; no one

78. Indramandi, 2.

79. Bhadrabahu, 92.

80. Bhadrabahu, 64.

81. Vardhamana Niti, 47.

82. Vardhamana Niti, 15; Arhan Niti, 85.

83. See Partition.

84. Vardhamana Niti, 20-21; Arhan Niti, 46-48.

85. Bhadrabahu, 62; Arhan Niti, 125.

can obstruct her in doing so⁸⁶. If the husband is dead and the father-in-law or the mother-in-law have consented to the adoption by the widowed daughter-in-law of a son, she may (during the minority of the son) alienate the property for legal necessities, that is for religious purposes and the maintenance of the family⁸⁷.

If the grandson dies during the lifetime of the grandfather, his widow has no right in the ancestral property in the presence of her father-in-law and the mother-in-law⁸⁸. Even in the property of the father-in-law the widowed daughter-in-law has no right during the life of the mother-in-law⁸⁹. She enjoys, not the power of disposal over the property, but the right to maintenance⁹⁰. Nevertheless the father-in-law and the mother-in-law may, if they so desire, permit her to make an adoption⁹¹. The widowed daughter-in-law cannot recover even the

86. Arhan Niti, 115 and 125.

87. Bhadrabahu, 113 and 117; Vardhamana Niti, 35.

88. Bhadrabahu, 63, 113-114.

89. Vardhamana Niti, 35; Arhan Niti, 108.

90. Bhadrabahu, 63; Arhan Niti, 102, 103 and 108.

91. Bhadrabahu 116-117; Vardhamana Niti, 35, 36.

property, which her husband gave away to his parents⁹², though she may have to depend entirely for her living on whatever little her husband gave to her during his life-time⁹³, as good people do not claim back the property that has been given away⁹⁴.

If the father-in-law dies first and the husband after him, the widowed daughter-in-law will inherit the entire estate of her husband⁹⁵. But she ought to maintain her mother-in-law and look after her and bring up the family⁹⁶. The mother-in-law, then cannot make an adoption⁹⁷; for the daughter-in-law and not the mother-in-law, holds the purse then⁹⁸. In the self-acquired property of the father-in-law or in the ancestral property that may be in his possession, the widowed daughter-in-law has no right of any kind⁹⁹. But she has the power of disposal over the self-acquired property of her deceased

92. Arhan Niti, 112; Bhadrabahu, 115; Vardhamana Niti, 55.

93. Bhadrabahu, 115; Vardhamana Niti, 55.

94. Bhadrabahu, 68; Indrananda, 26 and 27.

95. Bhadrabahu, 65.

96. Bhadrabahu, 63, 65, and 77.

97. Bhadrabahu, 75.

98. Bhadrabahu, 76.

99. Bhadrabahu 61; Arhan Niti, 101-102.

husband¹⁰⁰. On the death of the father-in-law, her son succeeds to his grandfather's property, but the (widowed) daughter-in-law is only entitled to maintenance¹⁰¹. Hence if the father has died during the life-time of the grandfather, the widowed mother cannot deal with the property of her father-in-law without the consent of her son¹⁰². A married daughter has no right in the property of her father in the presence of her brothers¹⁰³. She takes only what she has received at the time of her marriage¹⁰⁴. Married daughters succeed to the Stridhan of their respective mothers¹⁰⁵. If there be no daughter, then her daughter, and in her absence, the son is the heir of his mother's Stridhan¹⁰⁶. The unmarried daughter (whether one or more than one) is not entitled to anything over and above maintenance and a provision for marriage out of the estate of the father in the presence of her brothers¹⁰⁶.

100. Arhan Niti, 102.

101. Arhan Niti, 103.

102. Arhan Niti, 101.

103. Bhadrabahu, 20; Arhan Niti, 56.

104. Indranandi, 14.

105. Indranandi 15.

106. Bhadrabahu, 19; Vardhamana Niti, 9; Arhan Niti, 25.

Mode of Partition :

At the very commencement the Tirthankara (God) should be worshipped (to ensure the purification of the mind and intention). After this an estimate of the joint estate is made in the presence of some respectable persons and the share of the son separated. All other shares should be worked out likewise. If led by evil intention or selfish motives that the father has not paid due regard to the claims of his wife or disqualified members of the family to maintenance, or if the partition is the outcome of dishonesty, it will be invalid¹⁰⁷. But if the partition is righteous, the allocation of shares will be upheld, although there may be slight inequalities in them¹⁰⁸. Of course, a partition should not be made in violation of the principles of righteousness¹⁰⁸. If the father is exceedingly impatient, extremely old, licentious, vicious, ailing from some incurable disease, insane, addicted to gambling or drinking or given to uncontrollable fury, a partition effected by him

107. Indranandi, 11-12.

108. Arhan Niti, 17.

will be unsatisfactory¹⁰⁹. If the partition be effected by the elder brother and he conceals some property and deceives his younger brothers, he would be liable to punishment and may be deprived of his share¹¹⁰. If the brothers fall out and quarrel over the inheritance, the matter should be referred to arbitration or a decision be sought (in a Court of Law) according to the rules of inheritance¹¹¹. If any doubt arises as regards the partition (e.g., allotment of property), the matter can be settled by means of documents or testimony of witnesses before arbitrators or in Court.¹¹² Debts should first be paid (or their payment provided for) and the rest of the property be divided thereafter.¹¹³ Clothes, ornaments, grain-pits and other things of a like nature are not liable to division.¹¹⁴ An actual division should not be made of such things as a well.¹¹⁵ Cattle should be divided in whole numbers, not in fractional

109. Arhan Niti, 18-19.

110. Bhadrabahu, 107; Arhan Niti, 119.

111. Arhan Niti, 14.

112. Arhan Niti 129.

113. Bhadrabahu, 111; Arhan Niti 116.

114. Bhadrabahu, 112.

115. Bhadrabahu, 112; Indranandi 22.

shares.¹¹⁶ First of all the younger brothers should be married, or suitable provision be made for their marriages, and then the remaining property should be divided.¹¹⁷ If there be one or more younger sisters then every brother should first of all lay aside a quarter from his share for their marriages.¹¹⁸ This is the view of law according to the Vardhamana Niti and the Arhan Niti. There is a similar provision in the Bhadrabahu Samhita, which only mentions uterine sisters.¹¹⁹ The person recovering the immovable property of the family, lost during the life time of the father, is entitled to additional one-fourth share over and above his usual share.¹²⁰ But in such a case he will take the whole of the movable property.¹²¹ Ornaments, clothes and other similar things belonging to a co-sharer will not be partitioned.¹²² The lots should be so prepared

116. Bhadrabahu, 112.

117. Vardhamana Niti, 7 Arhan Niti, 20.

118. Vardhamana Niti, 9; Arhan Niti, 20 and 25.

119. Bhadrabahu, 19.

120. Indranandi, 20; This rule is also found in Mitakshara.

121. Vardhamana Niti, 37-38; Arhan Niti, 134-136.

122. Indranandi, 21.

that no body should quarrel¹²³. If a brother has renounced the world and has become a Sanyasi, his share will go to his wife.¹²⁴

When a man wishes to renounce the world, he should perform worship of the Tirthankara first of all and then collect respectable people, and in their presence make over all his property to his son. Or, he may divide his property into three equal parts, giving away one such part for religious and charitable purposes, setting apart another part for the maintenance of the family, and dividing the third part equally amongst the sons. He should also appoint the eldest son the guardian of his younger children.

123. Indranandi, 38.

124. Arhan Niti, 90; Bhadrabahu, 84; Vardhamana Niti, 48.

CHAPTER III

INHERITANCE

The order of succession

under the Jaina law is as follows :

1. the widow,
2. the son,
3. the brother,
4. the brother's son (nephew),
5. the nearest Sapinda¹ within seven degrees,
6. the daughter,
7. the daughter's son,
8. the nearest Bandhu,
9. the Gotraja (the nearest member of the same gotra),
10. the casteman (a member of the same caste),
11. the king.

This is the order given in the Indranandi Jina Samhita (see slokas 35--38). The Vardhamana Niti (see slokas 11 and 12) also gives the same order, a little abridged. According to the

1. The word Sapinda means a person within seven degrees of relationship.

Indranandi Jina Samhita, the Bandhu, the Gotraja, the member of the caste and the King are recognised as heirs according to the custom of the place, (see slokas 37 and 38). This is in full agreement with the order mentioned in the Arhan Niti (see slokas 74 and 75), which lays down: first the widow, then the son, then the nephew, then a Sapinda, then the daughter's son, then a son of a Bandhu, then a Gotraja; in their absence a member of the caste and last of all the king inherits the estate. The mother's place is before the son amongst the heirs.² The husband is the first heir of the property of the female, excepting her Stridhan; the next is the son³. After the son, come the brothers and nephews of her husband, not her own⁴. A remoter heir does not succeed in the presence of the nearer one; hence the brother will exclude the nephews.⁵ For this reason the father will succeed before the brother as is the

2. Bhadrabahu, 110; Arhan Niti, 112.

3. Arhan Niti, 115-117; Bhadrabahu, 97.

4. Arhan Niti, 115-117; Bhadrabahu, 97, cf Arhan Niti, 55, where also the expression brother's son, used in connection with the adoption of a boy by a Jaina widow, signifies husband's brother's son.

5. Indranandi, 36.

case under the Hindu Law. The word son, when used as a legal technicality, includes the grandson⁶, and most probably also the great grandson, as under the Hindu Law (*Sunderji Damji v. Dahibai*, I. L. R., 29 Bom. 316). If the son lives jointly with his father and the property is ancestral he has a right in it. After partition he cannot succeed to the property of the separated father in the presence of the mother who will take as an heir. If both the parents are dead the son, whether he may be natural born or adopted, will succeed to the property⁷. On the death of a person without a son, his widow takes his property as an absolute owner⁸, whether it be divided or undivided (see *Indranandi Jina Samhita*, 15). She takes the

6. *Arhan Niti*, 97; *Indranandi*, 22.

7. *Bhadrahu*, 30.

8. *Bhadrahu* 95, *Arhan Niti*, 115 and 125 and the following rulings :

i. *Madanji Devehand v. Tribhawan Virchand* 12. J. C. 892-13 Bom., L. R. 1121.

ii. *Madanji v. Tribhawan*, 361 Bombay 396.

iii. *Shimbhu Nath v. Gayan Thand*, 16 All. 379. But in this case she was held to be absolute owner of her husband's property alone, not of the ancestral property.

iv. *Ghasanmal v. Hanu Chand* (1881) Select Case No. 4, Oudh).

v. *Beharilal v. Sukhbailal* (1865 unreported) cited in Select Cases (Oudh) page. 34, and in 6. N. W. P. H. C., Rep. 382/398 (where held that a Saraogi widow has the right

husband's share as absolute owner even if there be a son (see Indranandī, 35). If the father-in-law dies first and the husband subsequently, the widowed daughter-in-law will succeed to the entire estate of her husband⁹. Should she, out of affection for her daughter refrain from adopting any one and appoint the daughter, as her heiress, her property on her death will not devolve upon the members of her husband's

to alienate her husband's share of an undivided ancestral estate against the protest of the brothers.)

- vi. *Hulan Rai v. Bhawan* (1864 unreported), cited in *Select Cases (Oudh)* page, 34, where held that 'according to ancient usages and the customs of the brothers (brotherhood ?) the widow has absolute power (*Gikhtiar kamil*) over the real property ancestral and undivided, left by her husband as though it were personal, just the same as her husband has'.
 - vii. *Sheo Singh Rai v. Mst. Dakho*, 6, N. W. P. H. C. Rep 382 and on appeal 1 All. 688 P. C., where reference is to the self-acquired property of her husband.
 - viii. *Harnabli Rai v. Mandil Das*, 27 Calcutta 379 (respecting the husband's separate property, the court declining to draw any distinction between the ancestral and the non-ancestral property).
 - ix. *Somchandsa v. Motilal*, Indore High Court, Original case no. 6 of 1914 (Published in the Appendix to the *Jaina law* by J. L. Jami.)
 - x. *Mojilal v. Goribahu* (unreported), cited in 78 *Indian Cases* 461 at p. 462). But in this case the widow was held to be the absolute owner of her husband's self-acquired property.
9. *Bhadrabahu*, 65.

family but will go to her daughter; and even on the death of the daughter, it will not go back to the original family, but will devolve on her son, and on her husband, if she has no son¹⁰. The reason is this that the daughter also takes as an absolute owner, so that she becomes the starting point of inheritance when she dies, and the property remains in her family, that is in the family in which she is married, and does not revert to her parents' relations¹¹.

The son-in-law, the sister's son and the mother-in-law are not regarded as heirs under the Jaina Law¹². The unchaste widow is not entitled to succeed; she may be given maintenance¹³. The daughter-in-law, too, is not an heir under the Jaina Law¹⁴.

If a person has no nearer heir and dies leaving only a daughter, she will take the whole

10. Bhadrabahu, 95-97; Arhan Niti, 115-117.

11. Bhadrabahu, 97; Arhan Niti, 117; but see Chotay, Lall v. Chunnoo Lall, I. L. R. 4 Cal. 744, P. C. where the decision proceeded on the basis of the Hindu Law and a contrary conclusion was reached.

12. Arhan Niti, 118.

13. Arhan Niti, 76.

14. Vardhamana Niti 35; Arhan Niti 108; Zankuri v. Budhmal 57 Indian Cases 252.

property of her father¹⁵. And on her death, her heirs e. g., her son, 'will succeed to that property'¹⁶. If a person has no nearer heir than the daughter's son, the whole of his property will go to that daughter's son, because there is bodily connection between the nana (maternal grandfather) and the nati, the daughter's son¹⁷.

The Stridhan property of the mother goes to the daughter, whether she may be married¹⁸ or unmarried¹⁹. No conflict of opinion is to be inferred between the views of the Bhadrabahu Samhita and the Arhan Niti in this regard, because the latter could not have intended to ignore the unmarried daughter, considering that she has been- always preferred to her married sister. The Stridhan of an unmarried girl goes to her brother on her death²⁰. Married daughter succeed to the Stridhan property of her mother²¹. If there be no such daughter, her son and in his absence

15. Bhadrabahu, 24; Arhan Niti, 112.

16. Bhadrabahu, 24; Arhan Niti, 112.

17. Arhan Niti, 33- 34; Bhadrabahu, 27-28.

18. Arhan Niti, 33; Bhadrabahu, 27.

19. Bhadrabahu, 27.

20. Arhan Niti, 128.

21. Indranandi, 14.

the son of the deceased owner of the Stridhan will take the property²². The Stridhan property of a married girl, in the absence of her son, goes to her husband²³. Of the property of the female other than her Stridhan, her son will be the heir²⁴. It has been already stated that if the widow out of affection for her favourite daughter does not adopt a son her estate will go to that daughter and will not go to the brothers and nephews of her husband²⁵. The privilege is in the nature of a testamentary declaration whereby the female owner declares that her property will devolve on a particular daughter of hers; because the female heiress, under the Jaina Law is an absolute owner, and may give her property away to any one she likes, during her life or afterwards. Under the Jaina Law the property (other than the Stridhan) of the female owner does not devolve on her own brothers and nephews and other relations, but on the brother and nephews of her

22. Indramandi, 15.

23. Bhadrabahu, 29; Vardhamana Niti, 13; Arhan Niti, 35.

24. Arhan Niti, 28; Bhadrabahu, 21; Vardhamana Niti, 10.

25. Bhadrabahu, 96-98; Arhan Niti, 115-117.

husband²⁶. This will become clear by a comparison of the text of the Bhadrabahu Samhita under which the appointment of a daughter effects the exclusion of the husband's brothers and nephews²⁷.

On the death of a separated brother, if he has left no widow or son, his property will be divided equally amongst his surviving brothers²⁸. But if he has left a son, the son will succeed²⁹. If he has left no nearer heirs, his estate will devolve according to the rules laid down before³⁰.

On the death of a person, if he has no son, his property will go to his widow and on her death, her mother-in-law (if alive) will take it³¹. The point is, that after the son, the mother is the next heir in the order of succession so that if there be neither a widow nor a son the property of the deceased will go to his mother³².

26. Arhan Niti, 81-82.

27. Bhadrabahu, 96-97.

28. Indranandi, 35.

29. Indranandi, 35; Vardhamana Niti, 11.

30. Indranandi, 36, 37.

31. Bhadrabahu, 110; Arhan Niti, 112.

32. Arhan Niti, 112; Bhadrabahu, 110.

If the widow is *chazte* she will succeed to the property of her husband as an absolute owner, whether there be a son or not³³.

The rules of succession which come into operation on the death of a person also become applicable when a man disappears, becomes mad or renounces the world³⁴. The law as to the disposal of the property of a person, who has disappeared, will now be determined with reference to the provisions of the Indian Evidence Act, according to which a person who has not been heard of for more than seven years is to be regarded as dead. The kind of lunatic which will set into operation the law of succession is of the incurable type; but this matter will now be dealt with under the provisions of the Lunacy Laws (See Act 4 of 1912) and no question of succession will arise during the life-time of the lunatic.

All disputes as to succession and inheritance should be disposed off according to the Law or the local custom, if there be any, through the agency of courts, so that there may be no quarrels³⁵.

33. *Vardhamana Niti*, 14.

34. *Arhan Niti*, 53 and 91.

35. *Indramundi*, 37-38.

The King's obligations:

If a person has no known heir, the king should preserve his estate for three years; and if no one turns up to claim the property in the interval, he should himself take it³⁶. But that property should be applied to religious purposes³⁷.

36. Vardhamana Niti, 57.

37. Vardhamana Niti, 11-12.

CHAPTER IV
STRIDHAN
Woman's property

The following kinds of property are termed Stridhan¹ :

- (a) The Adhyagni (whatever is given in the presence of the sacred fire, and the priest or Pandit that is to say ornaments etc., which are received by a girl from her parents at the time of her marriage.²
- (b) The Adhyahavanika (that which is brought), that is what the young bride brings from her father's house in the presence of her father and brothers.³
- (c) The Pritidana (given with affection), that is the things given by the father-in-law and the mother-in-law at the time of the marriage.⁴

1. Bhadrabahu, 90; Vardhamana Āṅgī, 39-45.

2. Bhadrabahu, 85; Vardhamana Āṅgī, 40; Arhan Nīti, 138.

3. Bhadrabahu, 86; Vardhamana Āṅgī, 41; Vardhamana Nīti, 39.

4. Bhadrabahu, 87; Vardhamana Āṅgī, 42; Vardhamana Nīti, 40.

(d) The Audayika (or Saudayika), that is whatever is received after the marriage from the parents or the husband.⁵

(e) The Anvadheya, that is the things received from the ladies of her own or of the husband's household at the time of the marriage.⁶

Briefly put, whatever is received at the time of the marriage by the bride is all her Stridhan.⁷ And after the marriage all the clothes and ornaments given to her by her own people or the members of her father-in-law's family are also regarded as Stridhan.⁸ In the same manner things like vehicles and horses are treated as Stridhan.⁹ Whatever ornaments and clothes a woman receives for her personal use during her marriage and all the movable property the husband may give her constitute her Stridhan.¹⁰ And she alone is the owner thereof.¹¹ But she is not the owner of any immovable property that may have been made over to her by the husband.¹² If the husband has ordered

5. Bhadrabahu, 88; Vardhamana Niti, 43; Vardhamana Niti, 41.

6. Bhadrabahu, 89; Vardhamana Niti, 44; Arhan Niti, 142.

7. Vardhamana Niti, 39, 40; Arhan Niti, 136-137; Indranandi, 46.

8. Arhan Niti, 136-137.

9. Indranandi, 47.

10. Vardhamana Niti, 54; Indranandi, 3.

11. Arhan Niti, 143; Vardhamana Niti, 45.

12. Indranandi, 3.

ornaments to be made for his wife but has died before they are made, they will form part of her Stridhan;¹³ because if he had given her the money and she had ordered the ornaments herself, she would have been their owner and not he.

Stridhan is not liable to division at a partition, like the ancestral property.¹⁴ No one of the father's household should take anything that may have been given by them to a (married) girl or which may have been received by her from her father-in-law's people.¹⁵ Except during a famine or for religious necessities nobody can take the Stridhan, not even the husband.¹⁶ The term religious necessity should not be taken to signify matters like the ordinary daily worship, but some great distress or trouble threatening the community or religion. The wife's Stridhan may also be taken by the husband if he is under restraint.¹⁷ But the husband is allowed to take the Stridhan only if he has no other means left.¹⁸ However, should

13. Arhan Niti, 144.

14. Arhan Niti, 143-144.

15. Arhan Niti, 81.

16. Bhadrabahu, 90; Vardhamana Niti, 45, 46.

17. Arhan Niti, 145.

18. Arhan Niti, 145.

the husband be obliged to appropriate the Stridhan and is unable to refund it, is not obligatory on him to do so.¹⁹

The woman is the absolute owner of her Stridhan, and may give it away during her life to any one.²⁰ She may give it away even to her own brothers and nephews.²¹ The gift should be made in the presence of witnesses. But this cannot be obligatory. If there be disputes, they will have to be settled by arbitration or in a Court of law.²²

After the death of the woman her Stridhan will go to her son (in the absence of nearer heirs i.e., the daughter and her progeny), and even to her sister's daughter.²³ If she dies childless, her Stridhan property will go to her husband²⁴. Married daughter takes the property of her mother²⁵. The Stridhan of a married woman should not be taken by her father or by persons related to her through him.²⁶

19. Vardhamana Niti, 46; Arhan Niti, 146.

20. Indranandi, 49, 51.

21. Indranandi, 49-50.

22. Indranandi, 50-51.

23. Indranandi, 15 and 49.

24. Bhadrabahu, 29; Vardhamana Niti 13.

25. Indranandi, 14.

26. Arhan Niti, 81.

CHAPTER V

MAINTENANCE

The following persons are entitled to maintenance :

1. Children whether alive or dead, i.e., the living children and the deceased son's children or widow if any¹.
2. Persons disqualified for succession².
3. The other members of the family where the eldest brother takes the property³.
4. Unmarried daughters and sisters⁴.
5. Younger brothers born after partition where the father's estate is insufficient⁵. Provided that the other brothers are only bound to get the younger brothers married, which must naturally include education and maintenance during minority.

1. Arhan Niti, 9.

2. Bhadrabahu, 70; Arhan Niti, 9; Indranandi 13-14, 43; Vardhamana Niti, 53.

3. Bhadrabahu, 100; Arhan Niti, 24.

4. Bhadrabahu, 19; Vardhamana Niti, 9.

5. Bhadrabahu, 109.

6. Girls married into the family who have become widows, if well behaved and virtuous⁶.
7. The unchaste mother who is disqualified for inheritance⁷.
8. The mother, and the father, e.g. when disqualified for inheritance⁸.

The person in possession of the estate is bound to maintain those who are entitled to maintenance⁹. Generally, all the children, whether born or conceived, and all other persons who belong to the family are entitled to maintenance out of the family property¹⁰. The expenditure of the marriage of the daughters of the family must also be met out of the family property¹¹. But grown up sons are not entitled to any maintenance even when unwell¹². All the girls brought into the family by marriage are entitled to maintenance, whether they have children or not, provided that

6. Arhan Niti, 77.

7. Arhan Niti, 76.

8. Bhadrabahu, 65 and 77.

9. Bhadrabahu, 74, 98; Indranandi, 13-14.

10. Arhan Niti, 10.

11. Arhan Niti, 20; Vardhamana Niti 9; Bhadrabahu, 19 and 109.

12. Premchand Pepara v. Halas Chard Pepara, 12, W. R. 494.

their husbands are joint¹³. If any of them is unchaste, she should be turned out¹⁴. But if the widowed mother is unchaste, her maintenance will be provided for by her husband's brothers, nephews, or her own son, though she will not be entitled to inherit the estate¹⁵.

The maintenance allowed to the mother includes expenditure for religious purposes,¹⁶ that is to say, the mother is entitled to receive the ordinary expenditure for pilgrimage and other like religious purposes from the sons and their widows who may be in possession of the estate.

There is some difference of opinion as to the amount that should be allowed for the marriage of daughters, and this is perhaps due to the fact that no hard and fast rule can be laid down that will apply to each and every case. According to the Bhadrabahu Samhita the brothers should put aside a quarter of their shares for the marriage of their uterine

13. Arhan Niti, 77.

14. Arhan Niti, 77.

15. Arhan Niti, 76.

16. Bhadrabahu, 77.

sisters¹⁷. The Vardhamana Niti and the Arhan Niti both lay down the same rule¹⁸. But according to the Indramandi Jina Samhita, if there be two brothers and one unmarried sister, the property should be divided into three shares¹⁹. Now if the shares are equal, she will be entitled to a one-third share of the entire property ; but it seems probable that the ordinary allotment for marriage will be within this limit.

If the widow has adopted a son and made over all the property to him, she will be entitled to maintenance and to the guardianship of the adopted boy²⁰. The son, too, is entitled to maintenance even against the mother. But probably this will be so only where the mother has succeeded to the estate of the father, though morally she will be liable to maintain the children always, if she has the means to support them.

17. Bhadrabahu 19.

18. Vardhamana Niti, 9; Arhan Niti, 25.

19. Indramandi, 28.

20. Sheo Singh Rai v. Dakho (6 N. W. P. H. C. Rep. 382).

CHAPTER VI

GUARDIANSHIP

The younger brothers are enjoined to live with their elder brothers¹. And it is the duty of the elder brother to act towards them like a father². Even after partition if a brother is born, the elder brothers should perform his marriage³. The guardianship of the younger sisters upto the time of their marriage devolves, in the absence of the father, on their elder brothers.⁴ If a married girl has no one else to protect her and to take care of her property, her guardian will be some one of her father's family⁵. If the mother is alive and a younger boy or girl lives with her, separately from his or her other brothers, or there are no other

1. Bhadrabahu, 5; Arhan Niti, 24.

2. Bhadrabahu, 10; Arhan Niti, 29.

3. Bhadrabahu, 109.

4. Vardhamana Niti, 9; Bhadrabahu 19; Indranandi, 28; Arhan Niti, 20.

5. Arhan Niti, 82.

**SELECTIONS FROM
THE JAINA LAW
(PART II)**

brothers, the mother will be the guardian of the children⁶. If, owing to madness, disease, obsession of some other like cause, the widow is unable to take care of her property, it will be managed by her husband's brother or nephew, or by a person of his gotra, and, in their absence, by a neighbour⁷. Now-a-days matters relating to minority and guardianship of person and property are governed by the Indian Guardians and Wards Act, The Indian Lunacy Act, the Court of Wards Act and other similar Legislative enactments; will apply in cases falling within their purview.

The Jaina Law recognises the right of a person to arrange for the management of his property by means of a testamentary appointment of a trustee who will protect his widow as well as the estate⁸. The deed of appointment should be attested by witnesses and duly certified before the Panchas or the King⁹. If the trustee turns out to be untrustworthy after the death of the testator,

6. Vardhamana Niti, 18; Arhan Niti, 83, 84.

7. Arhan Niti, 78-80.

8. Arhan Niti, 46-48; Vardhamana Niti, 16, 17, 20 and 21.

9. Arhan Niti, 47; Vardhamana Niti, 20-21.

the widow will be entitled to get him removed and to have another person appointed in his place¹⁰. According to the Vardhamana Niti, she may herself replace the trustee and look after the property¹¹. The trustee is bound to look after the property with the utmost care, so that the property may be preserved and the family properly supported therewith¹². The widow taking the place of the trustee is entitled (within the terms of the deed of appointment or will) to alienate the property by gift, mortgage or sale, according to necessity¹³. If there be a natural or an adopted son, he cannot object to her dispositions¹⁴, for she enjoys all the privileges of a trustee, and is entitled to alienate the property by gift, mortgage or sale for religious or commercial necessities¹⁵.

10. Arhan Niti, 49-50; Bhadrabahu, 71-72.

11. Vardhamana Niti, 22-23; The same seems to be the import of Bhadrabahu, 73 and 74.

12. Arhan Niti, 51.

13. Arhan Niti, 52.

14. Arhan Niti, 52.

15. Vardhamana Niti, 24.

I

श्रीभद्रबाहुसंहिता

THE BHADRAEVAHU SAMHITA

संसृता पुत्रसद्भावो भवेदानन्दकारकः।

यदभावे वृथा जन्म गृह्यते दत्तको नरैः॥ 1॥

1. In the world, the existence of a son is such a source of happiness that, in the absence of a son, one's birth is fruitless, and a son is taken in adoption by men.

बहवो भ्रातरो यस्य यदि स्युरेकमानसाः।

महत्पुण्यप्रभावोऽयमिति प्रोक्तं महर्षिभिः॥ 2॥

2. If a man has many brothers, and if they are of one mind, it is due to his great *punya* (religious merit). So the great *Rishis* (ascetics) have said !

पुण्ये न्यूने भ्रातरस्ते दुहन्ति धनलोभतः।

आपत्तौ तन्निवृत्त्यर्थं ज्ञायभागो निरूप्यते॥ 3॥

3. Because of the decline in religious merit, those many brothers for greed of wealth entertain hostile feelings. To remove this trouble, this Law of Partition is undertaken.

पित्नोरुर्ध्वं भ्रातरस्ते ऋमेत्य वसु पैतृकम्।

विभजेरन् समं सर्वे जीवतो पितुरिच्छया॥4॥

4. On the death of the father and the mother, all those brothers get together the patrimony and divide it equally among themselves. But during their life (the brothers take only), according to the desire of the father.

ज्येष्ठ एव हि गृहणीजात्पित्र्यं धनमशेषतः।

अन्ये तदनुसारित्वं भवेयुः पितरं यथा॥5॥

5. The eldest son alone takes the whole property of the father. The other brothers, looking, upon him as a father, should live, in accordance with his wishes.

*प्रथमोत्पन्नपुत्रेण पुत्रो भवति मानवः।

पुनर्भवन्तु कतिचित्सर्वस्याधिपतिर्महान्॥6॥

6. By the birth of the first-born son a man becomes *putri* i.e., sonful (having a son); and how many ever so may be the sons born afterwards, the first-born remains the head of them all.

० पूर्वजेन तु पुत्रेण अपुत्रः पुत्रवान् भवेत्।

(अहंनोती, अशोक 231)

यस्मिन् जाते पितुर्जन्म सफलं धर्मजे सुते।

पापित्वमन्यथा लोक्ता वदन्ति महदद्भुतम्॥ 7॥

7. By the birth of the Dharma son (*i.e.*, the son begotten as a duty *i. e.*, the first son,) the world calls a man's life fruitful; otherwise he is called sinful. This is very surprising.

पुत्रेण स्यात्पुण्यवत्कर्मपुत्रः पापयुग्मवेत्।

पुत्रवन्तोऽत्र दृश्यन्ते पामराः कणयाचकाः॥ 8॥

दृष्टास्तीर्थकृतोऽपुत्रा पञ्चकल्याणभागिनः।

देवेन्द्रपूज्यपादाब्जाः लोकत्रयविलोकिनः॥ 9॥

8-9. Men by having sons become religiously meritorious; and by being sonless, sinful. In this world, many with sons are seen in a low position and begging for grains. And sonless *Tirthankaras* (the Jaina men-gods) are found to attain the Five Great Acquisitions,^a their lotus-feet are worshipable by the god of gods, and they are possessed of insight into the three worlds.

^a The *panchakalyana's* are: Conception (*garbha*), Birth (*jama*), Austerities (*tapu*), Omniscience (*kevalajnana*) and Salvation (*moksha*).

*ज्येष्ठोऽविभक्तभ्रातृन् वै पितेव परिपालयेत्।

तेऽपि तं भ्रातरं ज्येष्ठं जानीयुः पितृवत्सदा॥ 10॥

10. It is the duty of the eldest brother to protect like a father his undivided younger brothers. And these younger brothers also should always look upon the eldest brother as a father.

यद्यपि भ्रातृणामेकचित्तत्वं पुण्यप्रभावस्तथापि।

धर्मवृद्धये पृथग्भवनमपि योज्यम्॥ 11॥

मुनीनामाहारदानादिना सर्वेषां पुण्यभागित्वात्।

भोगभूमिजन्मरूपफलशक्तिः स्यात्तदेवाह॥ 12॥

11-12. Although it is the effect of the fruition of religious merit that brothers should be of one mind, yet it is desirable to live separately, for the increase of *dharma* (religion or piety). For the merit arising from feeding ascetics, from charity, etc. (on partition), shall accrue to each brother separately, which merit is rewarded in the form of birth in *bhogabhumi*) the land of enjoyment where men do nothing and get all they want from wishing-trees).

* विभक्तानविभक्तान्ये भ्रातृज्येष्ठः पितेव सः।

पालयेच्चैऽपि तं ज्येष्ठं भवन्ते पितरं यथा॥

—(अहंनोती, श्लोक 222)

विभक्ता भ्रातरो भिन्नास्तिष्ठन्तु सपरिच्छदाः।

दान-पूजादिना पुण्यं वृद्धिः संजायतेतराम्॥ 13॥

13. Divided brothers should live separately, each with his own family; for religious merit is increased much by charity, worship, etc.

तदद्रव्यं द्विविधं प्रोक्तं स्थावरं जंगमं तथा।

स्थानादि स्थावरं प्रोक्तं यदन्यत्र न गम्यते॥ 14॥

14. The wealth (that is partitioned) is of two kinds : (immovable and movable). That property which cannot go from place to place, for example, land, etc., is called *sthavara*.

*स्थावरं न विभागाहे नैव कार्या विकल्पना।

स्थास्याम्यत्र चतुष्पादवात्र त्वं तिष्ठ मद्गृहे॥ 16॥

16. *Sthavara* (immovable property) is not subject to partition, and even such a desire should not be entertained. "In this fourth part of the house, I shall live; you live in that part"—thus (the brothers should) arrange.

सर्वेऽपि भ्रातरो ज्येष्ठं विभक्ताज्जङ्गमा तथा।

किञ्चिदंशं च ज्येष्ठाय जत्त्वा कुर्युः समांशकम्॥ 17॥

17. All brothers should give, from the movable property that is to be partitioned,

* न विभाज्यं न विक्रीयं स्थावरं न कदापि हि।

प्रतिष्ठाजनकं लोकं आपदाकालमन्तरम्॥ (अहंनैर्वा, श्लोक 5)

some portion to the eldest brother, and then divide the remainder equally with him.

गोधनं तु समं भक्तस्य गृहीयुस्ते निजेच्छया।

कश्चिद्धर्तुं न शक्तेऽचेदन्यो गृह्णात्यसंशयम् ॥ 18 ॥

18. Cattle, etc., being equally divided should be taken (by the brothers), according to the desire of each one. But if some one is unable to take his share, the others can undoubtedly appropriate it.

भ्रातॄणां यदि कन्या स्यादेका बह्वः सहोदरैः।

स्वांशात्सर्वैस्तुरीयांशमेकीकृत्य विवाह्यते ॥ 19 ॥

19. If the brothers have one or more uterine sisters, a fourth part of the share of each brother should be collected and the girls married.

ऊढायास्तु न भागोऽस्ति किञ्चिद् भ्रातृसमक्षतः।

विवाहकाले यत्पित्रा दत्तं तस्यास्तदेव हि ॥ 20 ॥

20. The share of a married daughter in the property of the father, in the presence of her brothers, is nothing. Whatever the father gave her at the time of marriage, that only belongs to her.

सहोदरैर्निजाम्बाया भागस्सम उदाहृतः।

साधिकं व्यवहारार्थं मृतौ सर्वेऽंशभागिनः ॥ 21 ॥

21. Their mother is also said to be entitled to an equal share with the brothers (her sons).

She is entitled to a slightly larger share for meeting the ordinary social expenses (*vyavaharartha*). And on her death, all share it.

एककाले युगोत्पत्तौ पूर्वजस्य हि ज्येष्ठता।
विभागसमये प्रोक्तं प्राधान्यं तस्य सुरिभिः॥ 22॥

22. Of the twin-born sons, the son that is produced first is said to be the first-born or the eldest. And the wise have considered him to be entitled to the privileges of the first born at the time of partition.

यदि पूर्व सुता जाता पश्चात्पुत्रश्च जायते।
तत्र पुत्रस्य ज्येष्ठत्वं न कन्याया जिनागमे॥ 23॥

23. If a daughter is born first, and a son is born afterwards, then also the son is eldest born and not the daughter, according to the Jaina scriptures (*Jinagama*).

यस्यैकपुत्री निष्पन्ना परं सन्तत्यभावतः।
सा तत्सुतो वाऽधिर्पतिः पितृद्वयस्य सर्वतः॥ 24॥

24. If a man has only a daughter, and other male issue (*santana*) is non-existent, that daughter and her son become the sole owners of the wealth of her father.

आत्मा वै जायते पुत्रः पुत्रेण दुहिता समा।

तस्यामात्मनि तिष्ठत्यां कथमन्यो धनं हरेत्॥ 26॥

26. The son is born as one's own self. The daughter is like a son. Then, in the presence of that daughter like one's own self, how can another take the wealth ?

ऊढानूढाऽथवा कन्या। मातृद्रव्यस्य भागिनी।

अपुत्रपितृद्रव्यस्याधिपते दौहित्रको भवेत्॥ 27॥

27. The mother's property goes to the daughter, whether she be married or unmarried. And of the property of a sonless father, the daughter's son becomes the owner.

न विशेषोऽस्ति लोकांस्मिन् पौत्रदौहित्रयोः स्मृतः।

पित्रारेकत्रसम्बन्धाज्जातयोरेकदेहतः॥ 28॥

28. In this world there is no difference between one's daughter's sons, or a son, both of, whom are born of the same union and of the same two bodies (of a man and his wife).

ऊढपुत्र्यां परेतायामपुत्रायां च तत्पतिः।

स स्त्रीधनस्य द्रव्यस्यधिपतिश्च भवेत्सदा॥ 29॥

29. A married daughter dying and being without a son, her husband alone always is the owner of her *stridhana*, her property.

* यस्याकस्यां तु कन्यायां जातायां नान्यमन्ततिः।

प्राप्तं तस्याच्चाधिपत्यं सुतायास्तुतस्य॥ (अहंब्रौती, 31)

तयोरभावे तत्पुत्रो दत्तको गोत्रियः पतिः।

पितृद्रव्याधिपः स्याद्वै गुणवान् पितृभक्तिमान्॥ 30॥

30. In the absence of these two (husband and wife), a son, or adopted son of the family, devoted to the father, full of merits, becomes owner of the property of the father.

एकपितृजभ्रातृणां पुरुषैकस्य जायते।

तेन पुत्रेण ते सर्वे बृद्धेः पुत्रिण ईरिताः॥ 38॥

38. If, of brothers born of the same father, one has a son, all the brothers are considered to be sonful (with a son), because of that son. So it is said by the wise.

औरसेऽसति पितृभ्यां ग्राह्यो वै दत्तकः सुतः।

सोऽप्यौरस इव प्रीत्या सेवां पित्रोः करोत्यसौ॥ 41॥

41. If not having a son of their bodies, the parents should take a son in adoption. For the adopted son also, like a son of the body, serves the parents affectionately.

अपुत्रो मानवः स्त्री वा गृहीयादत्तपुत्रकम्।

पूर्वं तन्मातृपित्रादेः ससाक्षिलेखनं स्फुटम्॥ 42॥

42. When a sonless man or woman takes a son in adoption, they first take in writing before witnesses (*sakshi*) from the mother and the father of the son (to be taken in adoption).

स्वकीयभातृजातीयजनमाक्षियुतं मिथः।
कारयित्वा राजमुद्राद्विज्ञं भूपाधिकारिभिः॥ 43॥
कारयेत्पुनराहूय नरनागैः कुटुम्बिकाः।
वादितनृत्यगानादिमंगलाचारपूर्वकम्॥ 44॥

43-44. Having the writing attested by one's relations and people of brotherhood, having it sealed by the King's officers with the royal seal, they invite the man and women of their family and have music, dancing, and singing along with auspicious introductory prayer.

द्वारोद्घाटनसत्कर्म कुर्वन्ति श्रीजिनालये।
घृतकुम्भं स्वस्तिकं च त्रिजनाग्रे स्थापयेद् गुरुम् ॥ 45॥

45. In a Jaina temple they perform the auspicious ceremony of *dvarodhghatana* (opening the door) and other good deeds (charity, etc); and place a pitcher of *ghee* and *svastika*, before the image of the God.

उत्तरीयमधोवस्त्रं दत्त्वा व्याघ्रद्वयं मन्दिरम्।
स्वं समागत्य नृस्त्रीभ्यस्त्राम्बूलं श्रीफलादिकम्॥ 46॥
स्त्रीभ्यश्च कञ्चुकीर्देशत्कुङ्कुमालक्तपूर्विकाः।
अशनं कारयित्वा वै चातकर्मक्रियां चरेत्॥ 47॥

46-47. Having given clothes for head and waist *uttariya* and *adhovastra* to the preceptor for use in worship in the temple and having struck the sacred bell, they return to their home

and give betel-leaves and *sreephala* etc., previously sprinkled with saffron, to men and women and to servants. Having feasted all, they perform the birth ceremony.

परैर्भ्रात्रादिभिर्नीतं मुकुटं श्रीफलादिकम्।

एकद्वित्रिचतुरोऽपि गृद्धा रक्षेत्पिता शिशोः॥ 48॥

48. The father of the boy should accept and keep the diadems (literally, "crown" *mukuta*, but here "cap"), *sreephala*, etc., and one, two, three or four coins (*mudra* brought by the brotherhood and others).

व्यवहारानुसारेण दत्तं ग्रहणमेव च।

एतत्कर्मणि संजातेऽयं पुत्रोऽस्येति कथ्यते॥ 49॥

49. When the giving and taking has taken place according to these rites and ceremonies, the boy is said to be the son of this man (the adoptive father).

तदैव राज्यकर्मादिव्यापारेषु प्रधानताम्।

प्राप्नोति भूमिग्रामादिप्रस्तुष्वधिकृतिं पराम्॥ 50॥

50. And it is then alone that in works of estate and trade the son gets recognition, and becomes entitled to the land, villages and other things (of the adopter).

स्वामित्वं च तदा लोकव्यवहारे च मान्यताम्।

तत्संस्कारे कृते चैव पुत्रिणौ पितरौ स्मृतौ॥51॥

51. And then he (the adopted son) obtains ownership and respect in the world, on this *samskara* (birth ceremony, being performed), and the mother and the father are considered to be sonful (*puttrina*).

दत्तकः प्रतिकूलः स्यात् पितृभ्यां प्राग्मदूक्षितः।

बोधयेत्तं पुनर्दर्पात् तादृशो जनकस्त्वरम्॥52॥

तत्पित्रादीन् तदुद्धान्तं चापयित्वा प्रबोधयेत्।

भूयोऽपि तादृशश्चैव ब्रन्धुभूपाधिकारिणाम्॥53॥

आज्ञामादाय गृहतो निष्कास्यो ह्यर्भकस्त्वरम्।

न तन्नियोगं भूपाद्याः शृण्वन्ति हि कदाचन॥54॥

52-54. If the adopted son goes beyond the control of the parents, he should be counselled by the parents in persuasive language. Then, with the same object, he should promptly be warned by the father. Then his fault should be disclosed to his (natural) parents, and they should counsel him. If he does not improve, the adoptive father should obtain the acquiescence of his relations and the King's officers, and expel the boy from the house. The King, then, cannot listen to any petition of his rights by the expelled boy.

दत्तपुत्रं गृहीत्वा या स्त्र्याधिकारं प्रदाय च।

जंगमे स्थावारे वापि स्थातुं स्वं धर्मवर्त्मनि॥ 55॥

55. A woman adopting a boy, and passing over all authority to him, puts him in possession of all the movable and immovable properties, in order to devote herself to her religious practices.

पुनः स दत्तको कालजन्त्रिं प्राप्य मृतो यदि।

भर्तृद्रव्यादि यत्नेन रक्षयेत् स्तैन्यकर्मतः॥ 56॥

56. And if by chance such boy dies, efforts should be made to protect from theft the properties of the husband.

न तत्पदे कुमारोऽन्यः स्थापनीयो भवेत्पुनः।

प्रेतेऽनूढे न पुत्रस्याज्ञाःस्ति श्रीजिनशासने॥ 57॥

57. But in his place a new boy cannot be installed. The Jaina scriptures do not allow this, even if the son dies unmarried.

सुतासुतसुतात्पीयभागिनेयेभ्य इच्छया।

देयाद्धर्मेऽपि जामात्रेऽन्यस्मै वा ज्ञातिभोजने॥ 58॥

58. The property, left by the deceased adopted boy, may be given to the daughter's son, daughter's issue or to sister's son; or to son-in-law, or may be given to some one else, or utilized in feasting the community or for other religious purposes.

स्वयं निजास्पदे पुत्रं स्थापयेच्छेन्मृतप्रजाः।

युक्तं परमनूढस्य पदं स्थापयितुं न हि॥ 59॥

59. If the son is dead, it is permissible to instal a son in one's own place; but a new boy may not be installed in the place of the unmarried (deceased) one.

पित्रोः सत्वे न शक्तः स्यात् स्थावरं जंगमं तथा।

विविक्रयं गृहीतुं वा कर्तुं पैतामहं च सः॥ 60॥

60. In the life-time of the parents, he (the adopted son) has no power to hold or sell the movable and immovable properties of the father and mother and of the grand-father.

पैतामहक्रमायाते द्रव्येऽनधिकृतिः स्मृता।

श्वशुरस्य निजे कर्त्तव्यं कर्तुं च सर्वथा॥ 61॥

61. In the property acquired by the father-in-law or descended from his ancestors, the son's widow is said to have no right to meet her personal expenses, whatsoever.

सुताज्ञया विना भक्तेऽभक्ते तु धर्मकर्मणि।

मैत्रज्ञातिव्रतादौ तु व्ययं कुर्याद्यथोचितम्॥ 62॥

62. One can meet one's proper expenses for social, communal or religious purposes from joint property or from property partitioned, without the consent of the son,

तन्मृतौ तु स्त्रियश्चापि व्ययं कर्तुमशक्तता।

भोजनांशुकमात्रं तु गृह्णीयाद् वित्तमासतः॥ 63॥

63. On his death, his widow is powerless to alienate the property; she can have an allowance for food and clothes only in proportion to the estate.

NOTE :— The death of the son during the life-time of the father is in the mind of the author here. Hence— the words 'On his death' should be taken to mean 'on the father's death.'

सर्वद्रव्याधिकारस्तु व्यवहारे सुतस्य वै।

न व्ययीकरणे विवथस्य हि मातृसमक्षकम्॥ 64॥

64. The son has full control over the property for purposes of trade; but in the presence of the mother he has no power to spend the property.

सुते प्रेते सुतवधू-भर्तृन्मवस्वहारिणी।

श्वश्रूवा सह कियत्कार्त्तं माध्यस्थेन हि स्थीयते॥ 65॥

65. On the son's death, his widow inherits all his property; she should, however, for some time live respectfully with her mother-in-law.

रक्षन्ती शयनं भर्तुः पालयन्ती कुटुम्बकम्।

स्वधर्मनिरता पुत्रं भर्तृस्थाने नियोजयेत्॥ 66॥

66. Preserving the husband's bed, protecting the family and bound to her religion, she should instal her son in the place of her husband.

न तत्र श्वश्रूर्यत्किञ्चिद्देदनधिकारतः।

नापि पित्रादिलोकानामधिकारोऽस्ति सर्वथा॥ 67॥

67. The mother-in-law of the widow has no right to obstruct her in installing her son in the estate of her husband. Nor her father, and mother have any such power.

दत्तं चतुर्विधं द्रव्यं नैव ग्रह्णन्ति चोत्तमाः।

अन्यथा सकुटुम्बास्तं प्रयान्ति नरकं ततः॥ 68॥

68. Good people do not take back the four kinds of property that has been given. Otherwise they go to Hell with their families.

बहुपुत्रयुते प्रेते भ्रातृषु क्लीबतादियुक्।

स्याच्चेत्सर्वे समान्भागान्न दद्युः पैतृकाद्धनात्॥ 69॥

69. When a man dies, leaving many sons, and any of the brothers be affected by impotency, etc., then there should not be an equal division to all, out of the property of the father.

पङ्गुर्न्यस्तक्लीबान्धखलकुब्जजडास्तथा।

एतेऽपि भ्रातृभिः पोष्या न च पुत्रांशभागिनः॥ 70॥

70. Those who are lame, lunatic, impotent, blind, vicious, hunch-backed, and idiotic should be looked after by their brothers, but they are not entitled to a son's share (in patrimony).

मृतवध्वाधिकारीणो बोधितव्यो मृदूक्तिः।

न मन्येत पुरा भूपामात्यादिभ्यः प्रबोधयेत्॥ 71॥

भूयोऽपि तादृशः स्याच्चेदमात्याज्ञानुसारतः।

पुरातनो नूतनो वा हिंसास्यो गृहतः स्फुटम्॥ 72॥

71-72. The manager shall be counselled by the widow in persuasivel language (sweet words). If he does not listen to the advice he should, in the first instance be counselled through the King, and his officers, etc. If he does the same again, then, with the consent of the officers of the King, he should, whether old or young, be publicly expelled from the house.

रक्षणीयं प्रयत्नेन भर्तृव स्वं कुलस्त्रिया।

कार्यतेऽन्यजनैर्योग्यैर्बन्धुवहारः कुलागतः॥ 73॥

73. The widow, descended from a good family, should exert herself and preserve the property, as her husband did. And, in accordance with the family traditions, should have her business taken care of by other proper persons.

कुर्यात् कुटुम्बनिर्वाहं तन्मिषेण च सर्वथा।

येन लोके प्रशंसा स्याद्धनवृद्धिश्च जायते॥ 74॥

74. Similarly, she should support the family and relations, so as to obtain the good opinion of the world and an increase of wealth.

ग्राह्यः सदगोत्रजः पुत्रं भर्ता इव कुलस्त्रिया।

भर्तृस्थाने नियोक्तव्यो न श्वश्र्वा स्वपतेः पदे॥ 75॥

75. The good lady may, like her husband, take to herself a son of a good *gotra* (lineage) and instal him in the estate of her husband. This with regard to her (widow's) husband's estate cannot be done by her mother-in-law.

शक्ता पुत्रवधूरेव व्ययं कर्तुं च सर्वथा।

न श्वश्र्वाश्चाधिकारोऽत्र जैनशास्त्रानुसारतः॥ 76॥

76. The widow of the son has power to spend all. According to the Jaina Scriptures, her mother-in-law does not have this right.

कुर्यात्पुत्रवधूः सेवां श्वश्र्वोः पतिरिव स्वयम्।

सापि धर्मं व्ययं त्विच्छेद्दद्यात्पुत्रवधूर्वसु॥ 77॥

77. The son's widow should serve the mother-in-law as her husband did. And if the mother-in-law desires to spend money on religious matters, the son's widow should give her funds for that purpose.

मुक्त्युपायोद्यतश्चैकोऽर्जवेभक्तेषु च भ्रातृषु।

स्त्रीधनं तु परित्यज्य त्रिभजेरन् समं धनम्॥ 84॥

84. If before partition one of the brothers has renounced the world to follow the path of salvation, then, leaving aside the woman's property, *stridhan*, the property should be divided equally.

विवाहकाले पितृभ्यां दत्तं यद्भूषणादिकम्।
तदध्यग्निकृतं प्रोक्तग्निबाह्यणसाक्षिकं॥ 85॥

85. At the time of marriage, ornaments, etc., given by the parents are called *Adhyagni stridhana*, as given in the presence of fire and Brahmanas. (Priest or Pandita)

यत्कन्यया पितुर्गृहादानीतं भूषणादिकम्।
अध्याहवनिकं प्रोक्तं पितृभ्रातृसमक्षकम्॥ 86॥

86. Whatever ornaments, etc., the girl brings from her father's house, is called *Adhyahavanika stridhana*, as offered in the presence of her father and brother.

प्रीत्या यद्दीयते भूषाः श्वश्र्वा वा श्वशुरेण वा।
मुखेक्षणाङ्घ्रिग्रहणे गीतिदानं स्मृतं बुधैः॥ 87॥

87. Whatever is given affectionately as clothes, etc., by the girls' father-in-law or mother-in-law, on the ceremony of seeing the face or sprinkling the feet with water, is called *Pritidana stridhana* by the wise.

आनीतमूढकन्याभिर्द्रव्यभूषांशुकादिकम्।
पितृभ्रातृपतिभ्यश्च स्मृतमौदयिकं बुधैः॥ 88॥

88. Whatever is received by the married girl, the things such as ornaments, clothes, etc., from the parents, brothers or husband, is called *Audayika stridhana* by the wise.

परिक्रमणकाले यद्धेभरत्नांशुकादिकम्।

दम्पतीकुलवामाभिरज्याधेयं स्मृतं बुधैः॥ 89॥

89. Whatever is given at the time of marriage-ceremony, such as gold, jewels, clothes, etc., to the girl, by her own or her husband's female relatives, is called *Anvadhya stridhana* by the wise.

एवं पञ्चविधं प्रोक्तं स्त्रीधनं सर्वसम्मतम्।

न केनापि कदा ग्राह्यं दुर्भिक्षाऽऽपदवृथादृते॥ 90॥

90. These five kinds of property have been called *stridhana*. It should not be taken by anyone, except in time of famine, acute distress, or for religious purposes.

पैतामहधनात्किञ्चिद्दत्तुं वाञ्छति सप्रजाः।

भगिनीभागिनेयादिभ्यः पुत्रस्तु निषेधति॥ 91॥

91. If a man desires to give out of the ancestral property anything to his sister or to her son, etc., his son can object to the gift.

विना पुत्रानुमत्या वै ज्ञातुं शक्तो न वै पिता।

मृते पितरि पुत्रस्तु दत्तत्वेन निरुध्यते॥ 92॥

92. Without the consent of the son, the father undoubtedly has no power to give anything. On the death of the father, who can obstruct the son giving away the property ?

गृहीते दत्तके पुत्रो धर्मगत्त्यां प्रजायते।
 स एवोष्णीषबन्धस्य योग्यः स्याद्वत्तकस्तु सः॥१३॥
 चतुर्थांशं प्रदाप्यैव भिन्नः कार्योऽन्यसाक्षितः।
 प्रागेवोष्णीषबन्धे तु जज्ञोऽपि समभाग्भवेत्॥१४॥

93-94. After having adopted a boy, if a son is born of one's lawful wife, this son alone is worthy of the turban-binding ceremony (symbolical of title to succession). And one-fourth part being given to the adopted son, he should be separated from the family before other witnesses. But, if the turban-binding ceremony has been performed on the adopted son, before the birth of the other son, the partition should be in equal shares.

पतेरप्रजसो मृत्यौ तदद्रव्याधिपतिर्वधुः।
 दुहितृप्रेमतः पुत्रं न गृहीयात्कदाचन॥१५॥
 न ज्येष्ठदेवरसुता दायभागाधिकारिणः।
 तन्मृतौ तत्सुता मुख्या सर्वद्रव्याधिकारिणी॥१६॥

95-96. On the husband dying without a son, the widow becomes the owner of the property. If she, out of affection for her daughter does not adopt a son, the sons of her husband's elder or younger brother have no right in the estate. On her death, her favourite daughter becomes the owner of all her property.

Note :— This means the testamentary appointment of a daughter to succeed the widowed mother. The declaration is oral and in the nature of what is known as a nuncupative will.

तन्मृतौ तत्पतिः स्वामी तन्मृतौ तत्सुतादिकाः।

न पितृभ्रातृतन्जानामधिकारोऽत्र सर्वत्र॥ 97॥

97. On the death of that daughter, her husband becomes the owner ; on his death, his children, etc. But her father's brothers and their descendants, &c., have no right in it, whatsoever.

प्रेते पितरि यत्किञ्चिद्धनं ज्येष्ठकरागतम्।

विद्याध्ययनशीलानां भागस्तत्र यवीयसाम्॥ 98॥

98. On the death of the father, whatever property comes into the hands of the elder son, his younger brothers, engaged in learning, have a right to a share in it.

Note :— This is in the nature of a suitable provision for maintenance of younger brothers engaged in the pursuit of knowledge.

अविद्यानां तु भ्रातृणां व्यापारेण धनार्जनम्।

पैत्र्यं धनं परित्यज्यऽन्यत्र सर्वे समांशिनः॥ 99॥

99. The illiterate brothers should make money by trade; and, keeping the father's estate apart, share the remainder equally.

Note :— Father's estate here means, his impartible property (see the next *śloka*). The remainder is the rest of the property that is divisible among the sons.

पितृद्रव्यं न गृहीयात्पुत्रेणैक उपार्जयेत्।

भुजाभ्यां यन्न भान्यं स्यादागतं गुणवत्तया॥ 100॥

100. The father's estate acquired by merit is not divisible among the sons. Only one, and not all, should possess it; and he should improve (increase) it, by his hands.

पत्यांगनायै यदत्तमलङ्कारादि वा धनम्।

तद्विभान्यं न दायादैः शान्ते नरकभीरुभिः॥ 101॥

101. Whatever ornaments or moneys are given to the wife by the husband, should not be partitioned by the co-sharers, for fear of going to hell, after death.

येन यत्स्वं खनेर्लब्धं विद्याया लब्धमेव च।

मैत्रं स्त्रीपक्षलोकाच्चागतं तद्गम्यते न कैः॥ 102॥

102. Whatever a man has acquired, by digging the treasure trove, by learning, from friends, from his wife's relatives, cannot be partitioned among anyone.

बहुपुत्रेष्वशक्तेषु प्रेते प्रितरि यद्धनम्।

येन प्राप्तं स्वशक्त्या नोऽत्र स्याद्दागकल्पना॥ 103॥

103. If a man dies leaving many sons, who are unfit, the self-acquired property of any of them is not liable to partition.

पिता सर्वे यथाद्रव्यं विभक्तास्ते निजेच्छया।
 एकत्रीकृत्य तद्रव्यं सह कुर्वन्ति जीविकाम्॥ 104॥
 विभजेरन् पुनर्द्रव्यं समांशैर्भ्रातरः स्वयम्।
 न तत्र ज्येष्ठान्गस्याणि भागः स्याद्विषमो यतः॥ 105॥

104-105. When the sons have been separated by the father with due shares in the property, and the sons themselves unite their funds and earn a common livelihood from this property, then on a re-partition, the brothers themselves should arrange their equal shares, without any additional share taken by the eldest brother in it.

जाते विभागे बहुषु पुत्रेष्वेको मृतो यदि।
 विभजेरन् समं रिबन्धं सभगिन्यः सहोदराः॥ 106॥

106. After a partition among several sons, if one of them dies, on partition of his unobstructed property his brothers and sisters take in equal shares.

Note :-The sister is given a share by way of a provision for her marriage, for she is not an heir.

निहन्तुते लोभतो ज्येष्ठो द्रव्यं भ्रातृन् यवीयसः।
 वज्यते राजदण्ड्यः स्यात् स भागार्हो न जातुचित्॥ 107॥

107. If, being full of greed, the eldest brother conceals the property from the younger

brothers and cheats them, he deserves to be punished by the King, and he cannot get even his own share.

द्यूतादिव्यसनासक्तः सर्वे ते भ्रातरो धनम्।
न प्राप्नुवन्ति दण्डज्ञाश्च प्रत्युतो धर्मविच्युताः॥ 108॥

108. All those brothers who forsake their religion and duty, and become addicted to gambling and other vices, cannot get property, but are liable to punishment.

विभोगोत्तरजातस्तु पित्र्यमेव लभेद्धनम्।
तदल्पं चेद्विवाहं तु कारयन्ति सहोदराः॥ 109॥

109. If a son is born after partition, he can take only his father's property. But if he be too small, then his brothers should have him married.

पुत्रास्याप्रजसो द्रव्यं गृहीयात्तद्वधुः स्वयम्।
तस्यामपि मृतायां तु सुतमाता धनं हरेत्॥ 110॥

110. If the son dies sonless, the property is taken by his wife herself. On her death, the mother of the son takes the property.

ऋणं दत्त्वाऽवशिष्टं तु विभजेरन् यथाविधिः।
अन्यथोपार्ज्यते द्रव्यं पितृपुत्रैः ससाहसैः॥ 111॥

111. After having paid the debts, the balance should be partitioned according to the rules. Otherwise, the father and sons should all set about diligently to earn.

कूपालङ्कारवासांसि न विभान्यानि कोविदैः।
गोधनं विषमं चैव मन्त्रिदूतपुरोहिताः॥ 112॥

112. A well, ornaments, clothes, cattle, a pit, a secretary, a messenger and priests are not partitioned by the learned.

पुत्रश्चेज्जीवतोः पित्रोर्मुक्तस्तन्महिला वसौ।
पैतामहे नाधिकृता भर्तृग्रच्य पतिव्रता॥ 113॥
भर्तृमञ्चकरक्षायां नियता धर्मतत्परा।
सुतं याचेत स्वश्रूँ हि त्वेनयानतमस्तका॥ 114॥

113-114. If a son dies during the life-time of his parents, his chaste wife has no right, like him, in the grandfather's property. But preserving the husband's bed, and bound by her religion, the widow should, with head bowed down, beg the mother-in-law for a son.

NOTE :— The grandson's widow is no heir to her father-in-law's father.

स्वभर्तृद्रव्यं स्वशुरस्वश्रूभ्यां स्वकरे यदा।
स्थापितं चेन शक्ताप्तुं पतिदत्तेऽधिकारिणी॥ 115॥

115. If the husband's property is placed in the hands of the father-in-law and mother-in-law, the widow cannot claim it; she can only take what the late husband gave her.

NOTE :— The case contemplated in the text is that of a gift which is irrevocable always.

प्राप्तुयाद्विधवा पुनः चेदगृहीयात्तदाज्ञया।
तद्वंशजं च स्वल्पं सर्वलक्षणसंयुतम्॥ 116॥

116. If the widow, with their permission, takes a boy in adoption, she must take one, of the same family, younger than herself and possessed of all good qualities.

जिनोत्सवे प्रतिष्ठादां सौहृदे धर्मकर्मणि।
कुटुम्बपालने शक्ता नान्यथा साऽधिकारिणी॥ 117॥

117. In the Jaina sacred procession, in the installation ceremony of an image and in other similar religious deeds, and in the bringing up of the family, the son's widow has the power to spend. But in nothing else, she has the power to spend.

NOTE :— The allusion is to the son's widow who has been allowed to adopt a boy by her mother-in-law. The effect of the consent is the divesting of the estate from the mother-in-law and its vesting in the adopted son. The rule of law laid down in the text is applicable to the period when the widow is the guardian of her adopted son's person and property.

इति संक्षेपतः प्रोक्तो ज्ञायभागविधिर्मयो।
 पासकाध्ययनात्सारमुद्धृत्य क्लेशहानये॥ 118॥
 एवं पठित्वा राज्यादिवर्त्म यो वा करिष्यति।
 लोके प्राप्स्यति सत्कीर्तिं परत्राऽप्स्यति सद्गतिम्॥ 119॥

118-119. Thus, briefly, the rules of Inheritance and Partition have been narrated by me substantially from the *Upasaka dhyayana*, in order to remove troubles and quarrels. Having read this, if one performs public (kingly) duties, one will get praise and reverence in this and a good *gati* (condition of existence) in the next world.

II

श्री वर्द्धमाननीतिः

THE VARDHAMANA NITI

प्रणम्य परथा भक्त्या वर्द्धमानं जिनेश्वरम्।

प्रजानामुपकाराय दायभागः प्रवक्ष्यते॥ 1॥

1. Making obeisance to Vardhamana, Lord of the Jinas (or Conquerors) with great devotion, the Law of Inheritance and Partition is being laid down for the welfare of the people.

गृहीते दत्तके पुत्रे धर्मफण्यां प्रजायते।

स एवोष्णीषबन्धस्य योग्यः स्याद्दत्तकस्तु सः॥ 5॥

चतुर्थांशं प्रदाप्यैव भिन्नः कार्योऽन्यसाक्षितः।

प्रागेवोष्णीषबंधे तु जातीऽपि समभागयुक्॥ 6॥

5-6. (See Bhadrabahu's Samhita, 93-94.)

असंस्कृतं तु संस्कृत्य भ्रातरो भ्रातरं पुनः।

शेषं विभज्य गृह्णीयुः समं तत्पैतृकं धनम्॥ 7॥

7. The brothers having married an unmarried brother, and having equally divided, take the remaining wealth of the father.

पित्रोरुर्ध्वं भ्रातरस्तं समेत्य वसु पैतृकम्।
विभजेरन्समं सर्वं जीवतो पितुरिच्छया॥ 8॥

8. (See Bhadrabahu Samhita, 4.)

अनूढा यदि कन्या स्यादेकाबक्त्रीः सहोदरैः।
स्वांशात्सर्वे तुरीयांशमेकीकृत्वा विवाहयेत्॥ 9॥

9. (See Bhadrabahu Samhita, 19.)

सहोदरैर्निजांबाया भागः सम उदाहृतः।
साधिकं व्यवहारार्थं मृता सर्वेऽशभागिनः॥ 10॥

10. (See Bhadrabahu Samhita, 21.)

पत्नीपुत्रौ भ्रातृजाश्च सपिण्डस्तत्सुतासुतः।
बान्धवो गोत्रजा ज्ञात्या द्रव्येशा ह्यत्तरोत्तरम्॥ 11॥

11. The wife, son, the brother's son, the *Sapindas*, the *bandhu*, the *gotraja*, a fellow casteman, these are the coparceners in the order (given).

तदभावे नृपो द्रव्यं धर्मकार्ये प्रवर्तयेत्॥
निष्पुत्रस्य मृतस्यैव सर्ववर्णेष्वयं क्रमः॥ 12॥

12. In the absence of these, the king should spend the wealth, for religious purposes, of the person who dies without issue : such is the law for all *varnas*.

ऊढपुत्र्यां परेतायाम्पुत्रायां च तत्पतिः।
स स्त्रीधनस्य द्रव्यमग्राधिपतिश्च भवेत्सदा॥ 13॥

13. (See Bhadrabahu Samhita, 29.)

पत्युर्धनहरी पत्नी या श्याच्चेद्वरवर्णिनी।

सर्वाधिकारं पतिवत् संति पुत्रेऽथवाऽसति॥ 14॥

14. The wife takes the wealth of the husband, if she is good. She has full powers like the husband, whether there is a son or not.

पितृद्रव्यादिवस्तूनां मातृसत्वे सुतस्य हि।

सर्वथा नाधिकारोऽस्ति दानविक्रयकर्मणि॥ 15॥

15. In the property and wealth of the father during the life time of the mother, the son has no authority at all to sell or give away in charity.

योऽप्रजा व्याधिनिर्मग्नश्चैकाकी स्त्र्यादिमोहितः।

स्वकीयव्यवहारार्थं कल्पयेत्लेखपूर्वकम्॥ 16॥

अधिकारिणमन्यं वै समाक्षिं स्त्रीमनोनुगं।

कुलद्वयविशुद्धं च धर्त्तिनं सर्वसम्मतम्॥ 17॥

16-17. One, without an offspring, full of diseases, alone infatuated with his wife (anxious to provide for her), should appoint, as a manager of his business in writing before witnesses, another person who is obedient to his wife, who is pure of descent on both (the paternal and the maternal) sides, who is wealthy, and acceptable to all.

औरसो दत्तको वाऽपि कुर्यात्कर्मं कुलागतम्।

विशेषं तु न कुर्याद्वै मातुराज्ञां विना सुधीः॥ 18॥

शक्तश्चेन्मातृभर्ताऽपि विनयी सत्यवाक्शमी।
सर्वस्वांतहरो मर्ना विद्याध्ययनतत्परः॥ 19॥

18-19. The *aurasa* as also the *dattaka* son should do whatever is in accordance with the family tradition; but beyond that he should do nothing without the mother's permission, even if he is wise, able, devoted to his mother, respectful, truthful, calm, all-winning, self-confident, and engaged in the acquisition of learning.

गृहीतदत्तकः स्वीदो जीवितप्राप्तसंशयः।
परो वा कुतसल्लेखं दत्त्वा स्वगृहसाधने॥ 20॥

20. The man, having taken (a boy) in adoption, getting doubtful about his life, should appoint someone by giving in writing a deed for the preservation of the family.

आपौगंडदशं बन्धुभूपाधिकृतिसाक्षिकम्।
स्वयं नियोजयेत्सद्यः प्रयादभूयःपरासुतां॥ 21॥

प्राप्ताधिकारः पुरुषः प्रतिकूलो भवेद्यदि।
मृतपत्नी तदादाय लेखभर्तृकृतं ततः॥ 22॥

स्वयं कुलागतं चान्नरैः रीतिं प्रचालयेत्।
पतिस्थापितसर्वस्वं नक्षणीयं प्रयत्नतः॥ 23॥

21-23. Having made his brotherhood and the king witnesses, he promptly himself makes over the income. If he then dies, and the man authorised becomes adverse to the wife of the

deceased, then taking that "writing" relating to land herself, in accordance with the family traditions, by means of others, follow the custom, (and) with her exertion should protect the property, left by the husband.

तन्मिथेणैव निर्वाहं कुर्यात्सा स्वजनस्य हि।

कुर्याद्धर्मज्ञातिकृत्ये वस्तुनामाधिविक्रये॥ 24॥

24. By the same means, she should maintain her relatives. For religious and communal purposes, she may sell or mortgage the property.

प्रतिकूलो भवेत्पुत्रः पितृभ्यां यदि सर्वथा।

तत्पितृादीन्समाहूय बोधयेच्च मृदूक्तिनः॥ 25॥

25. If the (adopted) son goes entirely beyond the control of the parents, then summoning his (natural) parents, he should be counselled in persuasive language.

पुनश्चापि स्वयं दर्पादुर्जनोक्त्या हि तादृशः।

तापयित्वा सुतोद्धातं बन्धुभूषाधिकारिणः॥ 26॥

तदाज्ञां पुनरादाय सिष्काश्यो गृहतो ध्रुवम्।

न तत्पूत्कारसंवादः श्रोतव्यो राजपंचभिः॥ 27॥

26-27. If even then, on account of pride, or being wicked, he remains the same, then declaring him to be no son, with the sanction of the brotherhood, the King and his officer,

he should certainly be turned out of the house.
And the King and the *Panchas* should not listen
to the laments (complaints) of that son.

पुनश्चान्यशिशुं भर्तुः स्थाने संयोजयेद्बधूः।
सर्ववर्णेषु पुत्रो वै सुखाय गृह्यते यतः॥ 28॥

28. Then, that woman, should instal another
child in the place of the husband; for in all the
varnas a son is meant for happiness only.

विपरीतो भवेद्वत्सः पित्र निःसार्यते ध्रुवम्।
विवाहितोऽपि भूपाज्ञापूर्वकं जनसाक्षितः॥ 29॥

29. If the adopted son becomes inimical and
is married, then taking the king's sanction, and
making the people witnesses, the father should
certainly turn him out.

दत्तपुत्रं गृहीत्वा यः स्वधिकारं प्रदत्तवान्।
जंगमे स्थावरे वाऽपि ऋणात् स्वं धर्मवर्त्मनि॥ 30॥

30. (See Bhadrabahu Samhita, 55.)

पुनः स दत्तकः काललीढ्यं प्राप्य मृतो यदि।
भर्तृद्रव्यादि यत्नेन रक्षते तत्तैव कर्मतः॥ 31॥

31. (See Bhadrabahu Samhita, 56.)

न तत्पदे कुमारोऽन्यः स्थापनीयो भवेत्पुनः।
प्रेतेऽनुदे न पुत्रस्याज्ञाऽस्ति श्रीजैनशासने॥ 32॥

32. (See Bhadrabahu Samhita, 57.)

सुतासुतसुतात्मीयभागिनेयेभ्य इच्छया।

देयाद्धर्मेऽपि जामात्रेऽन्यस्मै वा ज्ञातिभोजने॥ 33॥

33. (See Bhadrabahu Samhita, 58.)

स्वर्यं निजास्पदे पुत्रं स्थापयेच्चेन्मृतप्रजाः।

युक्तं परमनूढस्य प्रदे स्थापयितुं न हि॥ 34॥

34. (See Bhadrabahu Samhita, 59.)

श्वशुरस्थापिते द्रव्यं श्वश्रूस्त्वेष्वथवा वधूः।

नाधिकारमवाप्नोति भुक्त्याच्छादनमंतरा॥ 35॥

35. To the property left by the father-in-law, in the presence of the mother-in-law, the widowed daughter-in-law has no right, except for food and clothes.

दत्तगृहादिकं कार्यं सर्वं श्वश्रूमनोनुगम्।

करणीयं सदा वध्वा श्वश्रूर्मातुसमा यतः॥ 36॥

36. That woman should do all the work in accordance with the desires of the mother-in-law; for the mother-in-law is like the mother.

पितृद्रव्याविनाशेन यदन्यत्स्वयमर्जितम्।

मैत्रमौद्वाहिकं चैव न्यदभ्रातृणां न तद्भवेत्॥ 37॥

पितृक्रमागतं द्रव्यं इतमप्यानयेत्यरैः।

दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेवच॥ 38॥

37-38. Whatever a man has himself acquired without detriment to the father's property or has got from friends or in marriage or has ancestral (and not the brother's) property

recovered from others, and the gains of learning should not be given to coparceners.

विवाहकाले पतिना पित्रपितृव्यभ्रातृभिः।

मात्रा वृद्धभगिन्या वा पितृश्वस्रा यदर्पितम्॥ 39॥

वस्त्रभूषणपात्रादि तत्कर्षं स्त्रीधनं मतम्।

तत्तु पञ्चविधं प्रोक्तं विवाहसमयदिनम्॥ 40॥

39-40. At the time of marriage, whatever is given by the husband, father, father's brother, brothers, mother, elder sister, father's sister, as clothes, ornaments, utensils, etc., is woman's property —Stridhana (Adhagni).

It is of five kinds; and is given on the day of marriage.

पितुर्गृहात्पुनर्नीतं कन्याया भूषणादिकम्।

अध्याह्निकं प्रोक्तं भ्रातृबंधुसमक्षकम्॥ 41॥

41. Whatever ornaments etc., the girl brings from her father's house, as offered in the presence of her brother and relations, is called Adhyahavanika stridhana

दत्तं प्रीत्या च यत्स्वश्रजा भूषणादि स्वशुरेण वा।

मुखेक्षणाधिग्रहणे प्रीतिक्रानं तदुच्यते॥ 42॥

42. Whatever is given affectionately as clothes, etc., by the girl's father-in-law or mother-in-law, at the ceremony of seeing the face or touching the feet is called Pritidana stridhana.

ऊढया कन्ययाचैवं ऋत्तु पितृगृहात्तथा।

भ्रातुः सकाशादादत्तं धनमौदयिकं स्मृतम्॥ 43॥

43. Whatever is received by the married girl, from the house of her father or from her brother is called 'Audaṛika' stridhana.

विवाह सति यद्वत्तमंशुकं भूषणादिकम्।

कन्याभर्तृकुलस्त्रीभिरुवाधेयं तदुच्यते॥ 44॥

44. Whatever is given at the time of marriage ceremony as ornaments etc., to the girl, by the ladies of her husband's family is called Anvadheya Stridhana.

एवं पञ्चविधं प्रोक्तं स्त्रीधनं सर्वसम्मतम्।

न केनापि कदा ग्राह्यं दुर्भिक्षाऽपदवृषादृते॥ 45॥

45. The five kinds of property have been called stridhana. It should not be taken by anyone, except in time of famine, acute distress, or for religious purposes.

दुर्भिक्षे धर्मकार्ये च व्याधौ प्रतिरोधके।

गृहीतस्त्रीधनं भर्ता न स्त्रियै दातुमर्हति॥ 46॥

46. If the husband has taken the stridhan (woman's property) of his wife, in famine, religious work, illness, or actual hindrance (to some business etc.), he need not return it to the wife.

पितोः सत्वे न शक्ताः स्यात्स्थावरं जंगमं तथा।
विविक्रयं ग्रहीतुं वा कर्तुं पैतामहं च सः॥ 47॥

47. (See Bhadrabahu Samhita 60.)

मुक्त्युपायोद्यतश्चैको विभक्तेषु च भ्रातृषु।
स्त्रीधनं तु परित्यज्य विभजेरन्समं धनम्॥ 48॥

48. If before partition one of the brothers has proceeded to the path of Salvation, then, leaving aside the stridhana, the family property should be equally divided.

अप्रजाश्चेत्स्वद्वयाद्यङ्गिनीपुत्रितत्सुतात्।
मातृबंधुजनांश्चैव तथा स्त्रीपक्षजानपि॥ 49॥
विभक्तादविभक्ताद्धि; द्रव्यात्किञ्चिच्च दित्सति।
तद्भ्रातरो निषेद्धारो भवेयुरतिकोपिताः॥ 50॥

49-50. If a sonless person wants to give his property to his sister, his daughter or to their sons, or to his mother's or wife's relations, then, whether that property is divided or undivided, his brothers can become objectors, if very much dissatisfied.

यस्यैतेषु न कोऽप्यस्ति स द्रव्यं च यथेच्छया।
सुपथे कुपथे वापि दित्सन्वध्वा निवार्यते॥ 51॥

51. If one has no such brothers and wants to give his property for a good or bad cause, he can be checked by his wife.

येषां विभक्तद्रव्याणां मृते जेष्ठे कनिष्ठके।
भ्रातरस्तत्सुताश्चैव मोदरास्तत्समांशिनः॥ 52॥

52. If, out of those brothers, whose property has been partitioned, the elder or the younger dies, his brothers, and the sons of brothers, should share it equally.

पंगुरंधश्चिकित्स्यश्च। पतितक्लीवरोगिणः॥
जडोन्मत्तौ च व्रस्तांगः पोषणीयो हि भ्रातृभिः॥ 53॥

53. The lame, the blind, the invalid, one afflicted with impotency, a lunatic, he, who is wanting of a limb, should be looked after by the other brothers.

पत्यौ जीवति यः स्त्रीभिरलंकारो धृतो भवेत्।
न तं भजेरन्दायादाः भजभानाः पतन्ति ते॥ 54॥

54. In the husband's lifetime, whatever ornaments the wife is wearing, the coparceners should not divide them. If they divide them, they will be considered low.

स्वभर्तृद्रव्यं स्वश्रुरश्वश्रूभ्यां स्वकरे यदा।
स्थापितं चेन्न शक्ताग्तुं पतिदत्तेऽधिकारिणी॥ 55॥

55. (See Bhadrabahu Samhita 115.)

प्रप्नुयाद्विधवा पुत्रं चंद्रगृह्णीयात्तदाज्ञया।
तद्वंशजं च स्वलघुं सर्वलक्षणसंयुतम्॥ 56॥

56. (See Bhadrabahu Samhita 116.)

राजा निःस्वामिकं हिक्थं माव्यब्दं सुनिधापयेत्।
स्वाम्यासुतत्रशक्तस्तत्परस्तु नृपः प्रभुः॥ 57॥

57. The King should keep unclaimed property for three years. If the owner cannot be found (during that period), then the king becomes the owner of it.

III

श्री इन्द्रनन्दि-जिनसंहिता INDRANANDI JINA SAMHITA.

पणमिय वीर जिणेंदं णाउण पुराकयं महाधम्मं।
सउवासुज्झयणं दायविभागं समासदो वोत्थे॥ 1॥

1. Having made obeisance to Vira Tirthankara (and) having known the ancient great Scripture, the Anga Upasakadhyayana, I shall relate briefly the law as to Inheritance and Partition.

पुत्तो पित्तधणेहिं वक्कारे जं जहाय कप्पेइं।
पोतो दायविभागो अण्डिबंहो सण्डिबंहो॥ 2॥

2. The son, in practice, employs the father's wealth just as he likes, The grandson inherits it, whether it be Apratibandha (unobstructed) or Sapratibandha (obstructed).

जीवदु भत्ता जं धणु गिय भज्जं संपडुव्व संदिण्णं।
भुंजीद थावरं विणु जहेत्थु सातस्स भोयरिहि॥ 3॥

3. Whatever self-acquired wealth has been given by the living husband with affection, she (i.e., the wife) can enjoy it in any way whatsoever, except the immovable property, as the rightful enjoyer of it.

रयण धण धण जाई सव्वस्स हवे पहू पिदा मुखो।
थावर धणस्स सव्वस्स इत्थं पिदा पिदामहाणावि॥४॥

4. The father is the principal owner of all gems, cattle, corn and similar things; but neither the father nor the grandfather is the owner of all the immovable property.

संदे पितामहे जे थावर कथूण कोवि संदिट्ठं।
जं आभरणं वत्थं जहेत्थु तं विभायरिहा॥५॥

5. The grandfather being alive, none can take the immovable property. But all are entitled to their ornaments and clothes out of it according to their wants (i.e., need).

पुत्ताभावेपि पिदा उवज्जिणं जं धणं त्वविक्केदुं।
सक्को णावि यदुपदंवा थावर धणं तहा णेयं॥६॥

6. Even if the property was acquired before the birth of a son by the father, he cannot sell it; the immovable property should be treated like this.

जादा वा वि अजादा वाला अणाणिणो वा पिसुणा वा।
इत्थं कुडुंबवग्गो जत्तायां धम्म किचम्मि तजणे॥७॥
एयो विवक्कियं वा कुञ्चादाणं हि थावर सुवत्थु।
मादा पिदा हु भावय जेट्ठं भाय गदुगं पुणो अण्णो॥८॥
सव्वे सम सग्गा हुय तेण्णं कलहो नसं होई।
मादा सु दव्वयावा विग्गा भागं सु भाय णमित्तं॥९॥

गिण्हादि लंबडोविहु बुत्थो रुग्गोरु गयछहो कामी।
दुदो वेशासत्तो गिण्हइ भायं जहोच्चियं तत्थ॥ 10॥

7-10. Born or even unborn children, minors or unworthy, there being such members of the family, none can sell or make a gift of immovable property for pilgrimage, religious ceremony or for friends; but mother, father, elder brother, both and others all acting together can. Thus there can be no trouble. If the mother by her desire, partitions the property, whatever is just, they take.

An ill-behaved person, one afflicted with an incurable disease, one desireless, lascivious, engrossed in gambling or prostitution, take only so much share as they need.

अन्नय सख्वं समंसा सवंसिया अंगणा हू संकुज्जा।
जणये णणो बिभाऊ अहम्मदे कज्जये कयाकुत्थ॥ 11॥
जइचेदु करिज्ज तहा अपमाणं होइ सब्वत्थ।
सत्त विसणा सेवी विसयी कूट्ठो हू वाहि उ विमुहो॥ 12॥
गुरु मत्थय विमुहो बिय अहियारी णेव रारि सो होइ।
जिट्ठो गिण्हइ धणं जं बिहुणिय जणय तज्जणय जण्णं॥ 13॥
रक्खेइ तं कुडंबो जह पिरुगै तह समग्गाई।
उठाहु जादुहिदरो णिय णिय मायं स धणस्स भायरिहा॥ 14॥
तहभावे तस्स सुया तहभावे णिय सुउ आवि।
अविभत्त विभत्त धण मुक्खं सा होइ भामिणी तत्थ॥ 15॥

11-15. All the other sons take equally, the wife also takes equally, thus a partition should be effected. And against this, a partition should never be effected anywhere on account of personal feelings or for any other reason.

If such a partition is effected, it will be universally invalid.

The indulger in the seven vices, the sensualist, the leper, the desireless, he who is disobedient to the command of the *guru*, such a person is not entitled to claim a partition. The elder takes the property, which is left by the father and the father's father.

He should protect the family as the father and mother did, and he should be considered like the father and the mother by the family. If there are married daughters, they become heirs of the property of their respective mothers.

In her absence, her daughter, in her absence her own son indeed. Of the undivided or divided property, primarily his (one's) wife becomes the owner.

बृद्धं वा अब्बूढे गिणाहीया पंचजण सक्खी।
जो एगुद्धरेहिय कमदो भूर्मादु पुब्बणट्ठाई॥ 19॥

तुरियं भायं दिण्णय लहदिज अण्णोहु सव्वस्स।
 णिय जणय धणं जं बिहु णिण्वदव्वमघादए इतं दब्बं॥ 20॥
 दायादेउ ण दिज्जई विज्जालद्ध धणं जंहि।
 जइ दिण्ण धणं जं बिहु भूसणक्खयादियं व जं अण्णां॥ 21॥

19-21. Married or unmarried, she takes (in adoption) in the presence of the Panchas.

He, who recovers with his own exertion the land, which was formerly lost, is given one fourth part; all the rest is taken by others. Having protected (the wealth of one's father) like own property, not having injured or depreciated, takes the property.

May not give to the coparceners, also wealth, which is acquired by learning (gains of science), wealth which is received and also, certainly ornaments, clothes etc., and other things (which are similar or of a like nature).

णिण्हेदि ण दायादा पडंति णरये ण हा चावि।
 णियकारिय कूवाइय भूसण। वत्थुए धणोवि॥ 22॥
 णिय एवहि होई यहू अण्णपेये तस्स दायादा णोवि।
 पोयाहु पितदब्बं णिय यं ऊउवज्जियं तथा णेयं॥ 23॥

22-23. Coparceners do not take these kinds of property and, if they do, they fall into hell. Wells constructed by one-self, ornaments, clothes, also cattle and other property of a like

nature, certainly belongs to oneself. Of it others are never coparceners. Similarly know: the grandson to be sole owner of the property of his father, which he has recovered and of his own self-acquired property.

णिय पिउमहे जे दब्बे भाउजण णीछिया सुहवे।
धण्णं जं अविहतं तहेव तं समं समं णेयं॥ 24॥

24. The property of one's own grandfather, of that by brother and mother's will, when partition is made; know the wealth which is undivided, similarly subject to equal shares on partition.

धाईणिवं ट्ठावर सामित्तं दुण्ह तत्थ सरसम्मि।
जादे सुदे बिमाउ णेउहि सवणजणिय बहु सरिसो॥ 25॥

25. Of land and other ancestral immovable property those two (i.e. father and son) in the same way, will be the owners (in equal shares). On birth of a son by another of the same caste after partition, he will take like other brothers in equal shares.

पुव्वं पच्छाजादे विभत्तं ज्ञो सब्ब संग्हाही।
जीविदु पिच्चधणोवि ह्व जम्हि जहातहादिण्णं॥ 26॥
णेह विसादो तत्थहु गिण्ह जहुणावरेण एतत्थ।
पंचत्तगये जणये भाया ममभाइणी हवे तत्थ॥ 27॥

26-27. The son being born, afterwards is entitled to take a share in all the property divided before his birth in whatever way, to whom-soever the father has given his wealth (in his life-time).

It is not right to grumble at or be sorry for it, and another should not take it. The father having gone to the fifth condition of existence (i. e., having died) the mother becomes an equal sharer in it.

भाया भयणी दोबिय संभज्जा दायभाग दो सरिस्सा।
भायरी सु पहाडेबिय लहु भायर भायणी हु संक्खा॥28॥

28. The brother and sister both partition the estate equally. The elder brother should protect the younger brother and sister.

पित्तु गये परलोये अद्धं अद्धं सहणहुते सब्बे।
दायादा केके विहु पढमं जज्जा तदो दुपुत्तोहि॥35॥

35. The father having gone to the world beyond (i.e., having died) he will take half a share. And, who are the inheriters? First the wife; then the son;

पच्छादु भायराये पच्छातह तस्सुदा णेया।
पच्छा तहा स पिंडा तहा सुपुत्ती तहा सुतज्जोय॥36॥

36. Then the brothers; then the sons of the brothers; then his *sapindas* and his daughter and her son;

अण्णो इकोवि वंधुवि सुग्गोयजो जाइ जो हू दब्बेण।
तस्सवि लोयपमाणं रायपमाणं हवेइ जं पत्तं॥३७॥

37. And any other *Bandhu*; then any one of the same *gotra*, then any one of the same caste; becomes entitled to that property according to the rules of the people and the king.

दत्ते तम्मि ण कलहो सुण्णेच्छदो धम्मसूरिहिं णिच्चं।
दिण्णम परायपेत्त ससरिक्कयं णो हवेइ कलहो य॥३८॥

38. By so distributing it, there will be no quarrel. So have the saintly *Acharyas* (preceptors) ascertained for ever. In giving in this way (i.e., according to the people and the king) there will be no quarrel.

सोयखंधु वग्गो गेण्हदु तेसिं धणं कमसो।
पडिदो पंगू वहिरो उम्मसो संद कुज्ज अंधो य॥४१॥
बिसई जडो य कोही गूणो रुग्गो य पयडूलो।
विसणी अभक्खभोई एदेसिं भाग जुग्गदो णत्थि॥४२॥
भुत्ति वसण जणिता परंदू जस्सा विकस्सावि।
मंतो सहाइ शुद्धा एदेसिं भाग जोगदा अत्थि॥४३॥

41-43. If he is without *Bandhuvarga* (heirs or relations), his wealth should be taken according to the order, given above. The out-caste; the lame; the deaf; the lunatic; the impotent; the hunchback; the blind; the

sensualist (sybarite); the idiot; the wrathful; the dumb; the invalid; the person who is hostile (to oneself); he who is addicted to vice (gambling etc); and the partaker of forbidden food: these are not qualified for a share.

They should be provided with food and clothing. But whosoever of them, by incantation etc., becomes well, then there is fitness in him for a share.

एदेसिं बि सुदा अवि दुर्जिदा जो सब्ब गुण सुद्धोय।
होइहु भाय सु जुग्ग णियअम्मरदा जणाहु सब्बेसिं॥44॥

44. If these, by no means, can become normal, their daughter's son, endowed with all good qualities, is to receive their share (in the absence of nearer heirs). Understand: all these persons should be devoted to their *dharma* (religion)!

जहकालं जहखेतं जहाबिहें तेसिं समभाऊ।
बिबरीया णिव्वस्सा पडिअलाये तहेव वोढव्वा॥45॥

45. According to time, according to country, according to rules (custom) they should have equal shares. Those perverse to all proper usage are set apart (i.e., have no share). Know: those hostile to parents have to be the same (i.e., disentitled to a share).

पुब्बहु तहा सुद कमसो भागस्स भाइणो होई।

इत्थिय धणं खु दिण्णं पाणिगहणस्स काल ये सब्बं॥46॥

46. First the wife, then the son, in this order, become the inheritors in the estate. Stridhana is all what is, given at the time of marriage (the taking of the hand).

माया पिया भयिण्णा पिच्छसुसायेहिं संदिण्णं।

भूसण वत्थ हयादिय सब्बं खलु जाण इत्थियधणं॥47॥

47. Given by the mother, the father, the brother, and the father's sister, ornaments, clothing, houses etc. Know: all this to be woman's wealth (stridhan).

तज्जासुय भइणिसुया ण कोवि तस्सा णिवारउ होई।

जो सुद भाइ भतिजउ सक्खीजिय जं परस्सु धणदिण्णं॥49॥

तस्सहि कोउ णिसिद्धा ण होइ किमु वा विसेसेण।

साक्खी विणाय दिण्णं ण धणं तस्सावि होइ णिवियदो॥50॥

जादे दिग्धविवादे तस्सेव अणं धुवं होई।

एवं दायविभायं जहागमं मूणिबरेहिं णिदिट्ठं॥51॥

49-51. Of the property of the one, with offspring, her son and sister's son would be owners. No one can obstruct this. Of the property of the one, without offspring, her nephew-brother's son, would be the owner. Whatever wealth is given to another, in the presence of witnesses, there is no one to

obstruct it. What more can there be ? Whatever wealth is given without witnesses it never becomes his.

In dispute arising in partition, the property certainly remains that of the donor, for want of evidence i.e., witnesses. Thus the law of Inheritance and Partition, according to the Scriptures, has been laid down by the saints.

तं खु ववहारादो इयलोसभवंहि णादब्बं।

धम्मो दुविहो सावय आणारो धम्म पुब्बाव पदमं॥52॥

52. Certainly for the practice in this world that Law should be known. Dharma is of two kinds; first is that for laymen, involving the householder.

दुदिउ वउ पजुत्तो मूलं गाक्खिउगमउ सौचो।

भरहे कोसलदेसे साकेये।रिसहदेव जिणणाहो॥53॥

जादो तेणेउ कम्मवि भूमि रयणा समुदिट्ठा।

तस्स सुदेण य चक्क फण्ट्ठिणा भरहराय संगेण॥54॥

आचार दाण दंडा दार्याणिभाया समुदिट्ठा

यसुणंदि इंदणंदिहि रक्खिया सा संहिदा पमाणाहु॥55॥

53-55. Second is that for those with vows i.e., for ascetics. These are founded on the principle of increasing purity. In Bharatvarsha, in Kosala Country, in Saketa (Ayodhya) Rishabhadeva, the Lord of Jinas was born. The

arrangements (laws) for *karma bhumi* (world of strife) were preached (laid down) by Him. His son Bharata Chakravarti, the king of kings, laid down the rules of conduct, charity, punishment, inheritance and partition. This Samhita being arranged by Vasunandi Indranandi, is authoritative.

IV

श्री अर्हनीतिः

THE ARHAN NITI

लक्ष्मणातनयं नत्वा ह्यसदिन्द्रादिसेवितम्।
गेयामेयगुणाविष्टं दायभागः प्ररूप्यते ॥ 1 ॥

1. Having made obeisance to the Son of Lakshmana (Chandra Prabhu Tirthankara), who is worshipped by gods, beginning with Indra and who is endowed with innumerable qualities fit to be celebrated in songs, the chapter on *Dayabhaga* is composed.

स्वस्वत्वापादनं दायः स तु द्वैविध्यमश्नुते।
आद्यः सप्रतिबन्धश्च द्वितीयोऽप्रतिबन्धकः ॥ 2 ॥

2. *Daya* is what establishes one's right in ancestral property. It is of two kinds: the first is *Sapratibandha* (obstructed) and the second is *Apratibandha* (unobstructed).

दायो भवति द्रव्याणां तद्द्रव्यं द्विविधं स्मृतम्।
स्थावरं जंगमं चैव स्थितिमतं स्थावरं मतम् ॥ 3 ॥
गृहभूम्यादिवस्तूनि स्थावराणि भवन्ति च।
जंगमं स्वर्णरौप्यादि यत्प्रयोगेन गच्छति ॥ 4 ॥

Property is of two kinds: immovable and movable. That which is fixed is immovable, property like houses and gardens is immovable. Gold, silver and the like, which pass from hand to hand by disposal, are movable.

न विभज्यं न विक्रेयं स्थावरं च कदापि हि।
प्रतिष्ठाजनकं लोके आपदाकालमन्तरा ॥ 5 ॥

5. Immovable property: which in this world gives fixity of position, should never be partitioned or sold, except in a time of calamity.

सर्वेषां द्रव्यजातानां पिता स्वामी निगद्यते
स्थारस्य तु सर्वस्य न पिता न पितामहः ॥ 6 ॥

6. Of all things, the father is called the master. But of the immovable property, neither the father nor the grandfather is the master.

जीवत्पितामहे ताते दातुं नो स्थावरं क्षमः।
तथा पुत्रस्य सद्भावे 'पितामहमृतावपि ॥ 7 ॥

7. When the grandfather is living, the father has no power to give away immovable property similarly when there is a son, though the grandfather is dead, the father has no power.

पिता स्वोपार्जितं द्रव्यं स्थावरं जंगमं तथा।

दातुं शक्तो न विक्रेतुं गर्भस्थेऽपि स्तनंधये॥ ८॥

8. The father has no power to give or sell, self acquired movable or immovable property; even when the son is in the womb or is an infant at the breast.

अज्ञाता अथवा हीनः पितुः पुत्राः सदा भुवि।

सर्वे स्वाजीविकार्थं हि तस्मिंश्शहराः स्मृताः॥ ९॥

9. A son, even if he be wanting in knowledge, deficient in intellect, or devoid of any physical limb or organ, or fall in character, is entitled to a share in the father's property, for purposes of maintenance and livelihood.

बाला जातास्तथाऽज्ञाता अज्ञानाश्च शवा अपि।

सर्वे स्वाजीविकार्थं हि तस्मिंश्शहराः स्मृताः॥ १०॥

10. In the property, infants, born as well as unborn, those without understanding and those who have died, all their descendants are sharers, as it is their means for support.

अप्राप्तव्यवहारेषु तेषु माता पिता तथा।

कार्ये त्वावश्यके कुर्त्तस्य दानं च विक्रयम्॥ ११॥

11. When the sons are ignorant of business matters (minors), the mother or the father can, for necessary purposes, make a gift or sale of it.

दुःखागारे हि संसारे पुत्रो विश्रामदायकः।

यस्मादृते मनुष्याणां गार्हस्थ्यं च निरर्थकम्॥ 12॥

12. In this world, which is the abode of grief, a son is a giver of rest, without whom the householder's condition of life is purposeless.

यस्य पुण्यं बलिष्ठं स्यात्तस्य पुत्रा अनेकशः।

संभूयैकत्र तिष्ठन्ति पित्रोस्सेवासु तत्पराः॥ 13॥

13. One, who has much merit, gets many sons, who continue (live) together serving their parents.

लोभादिकारणान्जाते कलौ तेषां परस्परम्।

न्यायानुसारिभिः कार्यं दायभागविचारणा॥ 14॥

14. If out of covetousness, arises dissension among them, partition should be made according to justice.

पित्रोरुर्ध्वं तु पुत्राणां भागः सम उदाहृतः।

तयोरन्यतमे नूनं भवेद्भागस्तदिच्छया॥ 15॥

15. After the death of the parents, the share of the sons is equal. If any one of the parents be alive, the partition should be at his or her desire.

विभक्ता अविभक्ता वा सर्वे पुत्राः समांशतः।

पित्रोर्ऋणं प्रदत्तैव भवेयुर्भागभागिनः॥ 16॥

16. When divided or undivided, all the sons having paid the debts of the parents in equal shares, become sharers.

धर्मतश्चेत्पिता कुर्याल्लुब्धान् विषमभागिनः।

प्रमाणवैपरीत्ये तु तत्कृतस्याप्रमाणता॥ 17॥

17. If the father gives to the sons equal shares according to Dharma, it is valid; if contrary to Dharma, his disposition is invalid.

व्यग्रचित्तोऽतिवृद्धश्च व्यभिचारस्तस्तु यः।

द्यूतादिव्यसनासक्तो गहारोगसमन्वितः॥ 18॥

उन्मत्तश्च तथा क्रुद्धः पक्षपातयुतः पिता।

नाधिकारी भवेद्भागकरणे धर्मावर्जितः॥ 19॥

18-19. When the father is too impatient, too old, adulterous, addicted to gambling and other vices, incurably diseased, insane, angry or partial, he is not entitled to a partition, being devoid of Dharma.

असंस्कृता येऽनुजास्तप्तु संस्कृत्य भ्रातरः स्वयम्।

अवशिष्टं धनं सर्वे विभजेयुः परस्परम्॥ 20॥

20. Having performed the necessary ceremonies of the children (sons and daughters of the father), whose ceremonies had not been performed from the paternal wealth, the sons should divide among themselves the remainder.

Note:—The term ceremonies signifies education, marriage etc., in this context.

अनुजानां लघुत्वे तु सर्वथाप्यग्रजो धनम्।

सर्वं गृह्णाति तत्पैत्र्यं तदा तान्यालयेत्सदा॥ 21॥

21. When the younger brothers are incapable, the eldest takes the entire paternal wealth and supports them.

विभक्तानविभक्तान्वै भ्रातृन् ज्येष्ठःपितेव सः।

पालयेत्तेऽपि तज्ज्येष्ठ सेन्ते पितरं यथा॥ 22॥

22. The eldest supports the younger brothers whether divided or undivided, like the father, and they, too, serve him like a father.

पूर्वजेन तु पुत्रेण अपुत्रः पुत्रवान् भवेत्।

ततो न देयः सोऽन्यस्मै कुटुम्बाधिपतिर्यतः॥ 23॥

23. By the first born son, a sonless man becomes one with a son. Therefore he should not be given away to another for he is the head of the family.

ज्येष्ठ एव हि गृह्णीयात् पैत्र्यं धनमशेषतः।

शेषास्तदनुसारित्वं भजेयुःपितरं यथा॥ 24॥

24. The eldest alone may take the paternal estate; the others, shall live under him just as they lived under the father.

एकानेका च चेत्कस्या पित्रोरुर्ध्वं स्थिता तदा।

स्वांशात्पुत्रस्तुरीयांशं दत्त्वाऽवश्यं विवाहयेत्॥ 25॥

25. If after the death of the father, there are one or more unmarried daughters (of his),

their marriages should be performed, by the brothers by giving a fourth from their shares.

विवाहिता च या कन्या तस्या भागो न कर्हिचित्।
पित्रा प्रीत्या च यद्वत्तं तदेवास्या धनं भवेत्॥ 26॥

26. The married daughter never has any share. What the father might have given her out of affection, becomes her property.

पितरूर्ध्वं निजाम्बायाः पुत्रैर्भागश्च सार्धकः।
लौकिकव्यवहारार्थं कृन्तौ ते समांशिनः॥ 28॥

28. When there is partition after the death of the father, the mother should be given a half share by the sons for carrying on worldly affairs. When she dies, the sons take her share equally.

पुत्रयुग्मे समुत्पन्ने यस्य प्रथमनिर्गमः।
तस्यैव ज्येष्ठता ज्ञेयाऽइत्युक्तं जिनशासने॥ 29॥

29. When there are twin sons, the son who is first born has the right of the eldest according to the law of the Jinas.

दुहितापूर्वमुत्पन्ना सुरुः पश्चाद्भवेद्यदि।
पुत्रस्य ज्येष्ठता तत्र कन्याया न कदाचन॥ 30॥

30. When the daughter is born first and the son afterwards, the right of the eldest belongs to the son and never to the daughter.

यस्यैकस्यां तु कन्यायां जातायां नान्यसंततिः।

प्राप्तं तस्याश्चाधिपत्यं सुतायास्तु सुतस्य च॥ 31॥

31. If a person dies leaving one daughter and no other children, the daughter and her son become masters of the estate.

आत्मैव जायते पुत्रः पृत्रेण दुहिता समा।

तस्यामात्मनि तिष्ठत्यां ऋथमन्यो धनं हरेत्॥ 32॥

32. (See Bhadrabahu's Samhita 26)

गृह्णाति जननीद्रव्यं मृता च यदि कन्यका।

पितृद्रव्यमशेषं हि दौहित्रः सुतरां हरेत्॥ 33॥

33. The married daughter takes the wealth of the mother. Therefore, the daughter's son takes the estate of her father.

पौत्रदौहित्रयोर्मध्ये भेदोऽस्ति न हि कश्चना।

तयोर्देहेन संबन्धः पितरर्देहस्य सर्वथा॥ 34॥

34. There is no difference between the son's son and the daughter's son. There is connection between the bodies of both, with the bodies of their parents.

विवाहिता च या कन्या चेन्मृताऽपत्यवर्जिता।

तदा तदद्युष्मजातस्याधिपतिस्तत्पतिर्भवेत्॥ 35॥

35. When a married daughter dies without issue, all her wealth is taken by her husband.

विभागोत्तरजातस्तु पुत्रः पितृशभाग् भवेत्।

नापरेभ्यस्तु भ्रातृभ्यो क्तिभक्तेभ्योऽशमाप्नुयात्॥ 36॥

36. A son born after partition takes the shares of his father, and does not get his share from the other separated brothers.

पितरुर्ध्वं विभक्तेषु पुत्रेषु यदि सोदरः।

जायते तद्विभागः स्यादायव्ययविशोधितात्॥ 37॥

37. If a brother is born subsequent to partition after the death of the father, he takes a share in the estate, after allowing for income and expenditure.

जीवनाशाविनिर्मुक्तः पुत्रयुक्तोऽथवा परः।

सपत्नीकः स्वरक्षार्थमधिकारेपदे नरम्॥ 46॥

दत्त्वा लेखं सनामाकं राजाज्ञासाक्षिसंयुतम्।

कुलीनं धनिनं मान्यं स्थापयेत् स्त्रीमनोऽनुगम्॥ 47॥

प्राप्याधिकारं पुरुषः परासौ गृहनायके।

स्वामिना स्थापितं ह्यव्यं भक्षयेद्वा विनाशयेत्॥ 48॥

भवेच्चेत्पतिकूलश्च मृतवध्वाः कथंचन॥

तदा सा विधवा सद्यः कृतघ्नं तं मदाकुलम्॥ 49॥

भूपाज्ञापूर्वकं कृत्वा स्वाधिकारपदच्युतम्।

नरैरन्यैः स्वविश्वस्वैः कुलरीतिं प्रचालयेत्॥ 50॥

46-50. A person so ill as to be without hope of life, whether having a son or not, but having a wife, may for the preservation of his estate, appoint a manager, who is of good birth and rich, by making him the appointment in writing, bearing the permission of the king and

attestation by witnesses. If the manager, on the death of the owner, enjoys himself or wastes the wealth placed in his charge by the owner, or becomes antagonistic to the widow of the deceased, then the widow should dismiss such an ungrateful proud man, with the permission of the king and should carry on the work according to the practice of the family with another person trusted by her.

तदद्रव्यमतियत्नेन रक्षणीयं तथा सदा।

कुटुम्बस्य च निर्वाहस्तन्मिषेण भवेद्यथा॥ 51॥

सत्यौरसे तथा दत्ते सुविनीतेऽथवासति।

कार्ये सावश्यके प्राप्ते। कुर्यादानं च विक्रयम्॥ 52॥

51-52. She should preserve the property in her charge with great care, so that the family may be supported by her cleverness. When there is a legitimate son or a well-behaved adopted son or when there is none, she may, for necessary purposes, make a gift, mortgage or sale of the property in her charge.

भ्रष्टे नष्टे च विक्षिप्ते गत्यौ प्रवर्जिते मृते।

तस्य निःशेषवित्तस्याधिपा स्याद्वरवर्णिनी॥ 53॥

53. When the husband is dead or lost or becomes distracted in mind or becomes a sadhu, the wife becomes mistress of all his wealth.

भ्रातृव्यं तदभावे तु स्वकुटुम्बात्मजं तथा।
 असंस्कृतं संस्कृतं च तदसत्त्वे सुतासुतम्॥ 55॥
 बन्धुजं तदभावे तु तस्मिन्नसति गोत्रजम्।
 तस्यासत्त्वे लघुं सप्तर्ष्यसंस्थं तु देवरम्॥ 56॥
 विधवा स्वीरसाभावे गृहीत्वा दत्तरीतितः।
 अधिकारपदे भर्तुः स्थापयेत्पञ्चसाक्षितः॥ 57॥

55-57. The widow having, no male issue, should establish as master of her husband's estate, and take by the rules of adoption in the presence of five witnesses the brother's son (of the husband), in his default the son of a member of the family, whether his initiatory ceremonies have been performed or not, in his absence the son of a *Bandhu*, in his absence a boy of the same *gotra*, and in his absence the younger brother of the husband, the seven years old.

यद्यसौ दत्तकः पुत्रः प्रीत्या सेवामु तत्परः।
 विनयाद्भक्तिनिष्ठश्च भवेदौरसवत्तदा॥ 58॥

58. If the adopted son, serves the adopted parents with affection, is humble and respectful, he becomes like the legitimate son.

अप्रजा मनुजः स्त्रीं वा गृह्णीयाद्यदि दत्तकम्।
 तदा तन्मातृपित्रादेर्लेख्यं बध्वादिसाक्षियुक्॥ 59॥
 राजमुद्रांकितं सम्यक् कारयित्वा कुटुम्बजान्।
 ततो ज्ञातिजनांश्चैवाहूय भक्तिसमन्वितम्॥ 60॥

सधवा गीततूर्यादिमंगलाचारपूर्वकम्।
 गत्वा जिनालये कृत्वः जिनाग्रे स्वस्तिकं पुनः॥61॥
 प्राभृतं च यथाशक्ति। विधाय स्वगुरुं तथा।
 नत्वा दत्त्वा च सहान' व्याघृत्य निजमंदिरम्॥62॥
 आगत्य सर्वलोकेभ्यस्तांबूलश्रीफलादिकम्।
 दत्त्वा सत्कार्यस्वसृदानं वस्त्रालंकरणादिभिः॥63॥
 आहूतस्वीयगुरुणा कारयेज्जातकर्म सः।
 ततो जातोऽस्य पुत्रोऽयमिति लोकैर्निगद्यते॥64॥

59-64. If a childless man or woman takes a son in adoption, he or she should get a deed executed by his mother, father and the like, and attested by his relations; and properly stamped with the seal of the King, invite the relatives and Agnates with respect, and should, with songs by women having living husbands and music and other benefictory ceremonies, go to the temple of the Jina and make before the Jina the Swastika and offer presents according to ability; and having bowed to the Jina and having made good gifts in charity should return to his own house; having thus returned he should give to all persons betels and *Bel* fruits and the like and should honour his sisters and the like by giving the clothes and ornaments and then should cause the birth ceremony of

the adopted son to be performed by the invited *Guru*. Thereupon people say that this boy is born as son to him (the adopter).

तदेवापणभूवास्तुग्रामाभृतिकर्मसु।

अधिकारमवाप्नोति राज्यकार्येष्वयं पुनः॥ 65॥

65. Thereupon the adopted son becomes entitled to perform, as of right, all works about the shop, the land, the house, the village and the like.

गृहीते दत्तके जाते औरसस्तर्हि बन्धनम्।

उष्णीषस्य भवेत्तस्य ऋहि दत्तस्य सर्वथा॥ 67॥

67. On a legitimate son being born after a son has been taken in adoption, he alone is entitled to the head-dress, (i.e., headship of the family) and not the adopted son.

तुर्यमंशं प्रदायैव दत्तः कार्यः पृथक् तदा।

पूर्वमेवोष्णीषबन्धे यो जातः स समांशभाक्॥ 68॥

68. The adopted son should be given a fourth share and separated. If after the ceremony of fastening the head-dress has been performed, a son is born, he becomes entitled to an equal share.

प्रतिकूला कुशीला च निर्वास्या विधवापि सा।

ज्येष्ठदेवरतत्पुत्रैः कृत्वान्नादिनिबन्धनम्॥ 76॥

76. If the widow is perverse, and of evil conduct, she should be expelled by the husband's brothers and their sons after making settlement for her maintenance.

सुशीलाप्रजसः पोष्या योषितः साधुवृत्तयः।

प्रतिकूला च निर्वास्या दुःशीला व्यभिचारिणी॥ 77॥

77. Childless females of good conduct and chaste should be supported, but those, who are perverse, of evil conduct, and unchaste, should be expelled.

भूतावेशादिविक्षिप्तात्पृग्रव्याधिसमन्विता।

वातादिदुषितांगा च सूकांधाऽस्पृष्टभाषिणी॥ 78॥

मदान्धा स्मृतिहीना च धनं स्वीयं कुटुम्बकम्।

त्रातुं नहि समर्था या सा पोष्या ज्येष्ठदेवैः॥ 79॥

भ्रातृजैश्च संपिडैश्च बन्धुभिर्गोत्रजैस्तथा।

ज्ञातिजै रक्षणीयं तद्वत्तं चातिप्रयत्नतः॥ 80॥

78-80. A widow possessed by an evil spirit, one suffering from malignant diseases, or paralysis, she, who is dumb, blind or talks indistinctly arrogant or void of memory and thus not able to protect the estate or the family should be supported by her husband's brothers, brother's sons, the *Sapindas*, the *Bandhus*, the *Gotrajas* and Agnates, and her wealth should be protected by them with care.

यच्च दत्तं स्वकन्यायै यज्जामातृकुलागतम्।
तद्धनं नहि गृह्णीयात् कोऽपि पितृकुलोद्भवः॥ 81॥
किन्तु त्राता न कोऽपि स्यात्तदा तातधनं तथा।
रक्षेत्तस्या मृतौ तच्च। धर्ममार्गे नियोजयेत्॥ 82॥

81-82. What has been given to a daughter or what was received by her from her husband's family, should not be taken by any one born of her father's family. But if there is no protector, he should protect her and her wealth and on her death should spend it for religious purposes.

आत्मजो दात्रिमादिश्च विद्याभ्यासैकतत्परः।
मातृभक्तियुतः शान्तः सत्यवक्ता जितेन्द्रियः॥ 83॥
समर्थो व्यसनापेतः कुर्याद्रीतिं कुलागताम्।
कर्तुं शक्तो विशेषं नो मातुराज्ञां विमुच्य वै॥ 84॥

83-84. The legitimate son and sons adopted and the like engaged in the acquisition of learning, devoted to the mother, docile, truthful and having control over his senses, should when able, perform works according to the custom of the family but should do no important or special work against the order of his mother.

पितुर्मातुर्द्वयोः सत्वे पुत्रैः कर्तुं न शक्यते।
पित्रादिवस्तुजातानां सर्वथा दानविक्रये॥ 85॥

85. When both the father and the mother are alive, the son is not able to make a gift or sale of the paternal property.

पितृभ्यां प्रतिकूलः श्रियात्युत्रो दुष्कर्मयोगतः।

जातिधर्माचारभ्रष्टोऽश्वा व्यसनतत्परः॥ 86॥

स बोधितोऽपि सदात्त्यैर्नत्यजेद्दुर्मतिं यदि।

तदा तद्वृत्तमाख्याय ज्ञातिराज्याधिकारिणाम्॥ 87॥

तदीयाज्ञां गृहीत्वा च सर्वैः काव्यो गृहाद्वहिः।

तस्याभियोगः कुत्रापि श्रोतुं योग्यो न कर्हिचित्॥ 88॥

86-88. If the son on account of the ripening of evil karmas is opposed to his parents, and acts against the customs of the family or is addicted to vice, and being advised with good counsel does not forsake his evil ways, then having described his conduct to the kinsmen and to the king, with their permission, he should be expelled from the house. His complaint would not be fit, to be entertained anywhere.

पुत्रीकृत्य स्थापनीयोऽन्यो डिग्भः सुकुलोद्भवः।

विधीयते सुखार्थं हि न्यतुर्वर्णेषु सन्ततिः॥ 89॥

89. And another son born of good family should be established; because the son is taken in all castes for happiness.

पारिव्रज्या गृहीतैकेनाविभक्तेषु बन्धुषु।

विभागकाले तद्भागं तत्पत्नी लातुमर्हति॥ 90॥

90. If one of the brothers in an undivided family adopts the life of an ascetic, his estate should be taken by his wife.

पुत्रस्त्रीवर्जितः कोऽपि मृतः प्रव्रजितोऽथवा।

सर्वे तद्भातरस्तस्य गृह्णीयुस्तद्धनं समम्॥ 91॥

91. If a person, without a son or wife, dies or becomes an ascetic, all his brothers and their sons should take his wealth in equal shares.

उन्मत्तो व्याधितः पंगुः ण्डोऽन्धः पतितो जडः।

सस्तांगः पितृविद्वेषी मुमूर्खुर्वधिरस्तथा॥ 92॥

मूकश्च मातृविद्वेषी महाक्रोधी निरिन्द्रियः।

दोषत्वेन न भागार्हाः पोषणीयाः स्वभ्रातृभिः॥ 93॥

92-93. An insane, (incurably) diseased, lame, impotent, blind, outcasted, imbecile, having leprosy of the virulent kind, inimical to the father, in a dying condition, deaf, dumb, inimical to the mother, having excessive anger, and one devoid of an organ of sense, all these are not entitled to shares on account of disqualification and should only be supported by their brothers.

एषां तु पुत्राः पत्न्यश्चेच्छ्रद्धा भागमवाप्नुयुः।

दोषस्यापगमे त्वेषां भागार्हत्वं प्रजायते॥ 94॥

94. If these persons have sons or wives, who are free from defects, they should get their

share. If these persons, however, are cured of their defects, their right to their shares revives.

विवाहितोऽपि चेहृजः पितृभ्यां प्रतिकूलभाक्।

भूपाज्ञापूर्वकं सद्यो निःसार्यो जनसाक्षितः॥ 95॥

95. If an adopted son, even if married, becomes antagonistic to his parents, he should be expelled with the permission of the king, in the presence of witnesses.

पैतामहं वस्तुजातः दातुं शक्तो न कोऽपिहि।

अनापृच्छया निजां प्रतीं पुत्रान् भ्रातृगणं च वै॥ 96॥

96. No one can give away grandfather's property without the consent of the wife, sons and brothers.

पितामहार्जिते द्रव्ये निबन्धे च तथा भुवि।

पितुः पुत्रस्य स्वाप्तिवत् स्मृतं साधारणं यतः॥ 97॥

97. In the grandfather's property, whether movable, settled property or land, the right of the father and the sons is common.

पैतामहे च पौत्राणां भागाः स्युः पितृसंख्यया।

पितुर्द्रव्यस्य तेषां तु संख्यया भागकल्पना॥ 99॥

99. In the estate of the grandfather, the share of the grandsons is according to the number of the sons of the grandfather. And in their own father's property, their shares are calculated equally in accordance with their own numbers.

पुत्रस्त्वेकस्य संजातः सादरेषु च भूरिषु।

तदा तेनैव पुत्रेण ते सर्वे पुत्रिणः स्मृताः॥ 100॥

100. If among many brothers, one gets a son, by him all the others are possessors of the male issue.

अविभक्तं क्रमायातं शशशुस्वं नहि प्रभुः।

कृत्ये निजे व्ययीकर्तुं नृत्तसंमतिमंतरा॥ 101॥

101. A widow is not entitled to spend undivided ancestral wealth of the father-in-law for her own purposes, without the consent of her son.

विभक्ते तु व्ययं कुर्याद्भर्मादिषु यथारुचि।

तत्पत्न्यपि मृतौ तस्य कर्तुं शक्ता न तद्व्ययम्॥ 102॥

निर्वाहभात्रं गृह्णीयात् तदद्रव्यस्य चामिषतः।

प्राप्तेऽधिकारं सवत्र द्रव्ये व्यवहृतौ सुतः॥ 103॥

102-103. If separation has taken place before the death of the husband, she may spend according to her pleasure for religious and other purposes. But if the husband has died before partition, then she has no right to spend. She is entitled to take from the income of the property for her maintenance : the rest of the property goes to the son.

Note—The text is applicable to the case where the grandfather is alive and there is in existence the son of a pre-deceased son. It is provided that if the husband had obtained a share on partition from his father she could succeed to that share, but otherwise her husband himself never having had a share in his life, she could succeed to nothing. For during the life-time of the grandfather her husband had no share in the property of the grandfather.

तथापीशो व्ययं कर्तुं न ह्यंबानुमतिं बिना।

सुते परासौ तत्पत्नी भर्तुर्धनहरी स्मृता॥ 104॥

यदि सा शुभशीला स्त्री श्वश्रूनिर्देशकारिणी।

कुटुम्बपालने शक्ता स्वधर्मनिरता सदा॥ 105॥

104-105. Even then the son has no justification to spend without the mother's consent. But on his death, his widow succeeds to his property, if she is of good conduct and obedient, able to support the family and devoted to religion.

सानुकूला च सर्वेषां स्वामिपर्यकसेविका।

शुश्रूषया च सर्वेषु विनयानतमस्तका॥ 106॥

नहि सापि व्ययं कर्तुं समर्था तद्धनस्य वै।

निजेच्छया निजां श्वश्रूनापृच्छय च कुत्रचित्॥ 107॥

106-107. Being kind to all, chaste and respectful to the mother-in-law, she has no power to spend the husband's wealth, without consulting her mother-in-law.

Note—The last two slokas, taken together with numbers 104 and 105, lay down a rule or guidance for the family, which of course is merely directory.

श्वशुरस्थापिते द्रव्ये श्वश्रूसत्वेऽथवा वधूः।

नाधिकारमवाप्नोति मुक्त्याच्छादनमंतरा॥ 108॥

108. A widowed daughter-in-law has no right to the property left by the father-in-law, when the mother-in-law is alive, beyond the right to food and raiment.

दत्तगृहादिकं सर्वं कार्यं श्वश्रूमनोऽनुगम्।

करणीयं सदा वध्वा श्वश्रूमातृसमा यतः॥ 109॥

109. She should always do all works entrusted to her, in accordance with the desire of her mother-in-law, for the mother-in-law is equal to mother.

गृह्णीयादत्तकं पुत्रं गतिवद्विधवा वधूः।

न शक्ता स्थापितुं तं च श्वश्रूर्निजपतेः पदे॥ 110॥

110. A widowed daughter-in-law should take a son in adoption like her husband. The mother-in-law has no right to establish an adopted son in the place of her own husband.

स्वभर्त्रोपार्जितं द्रव्यं श्वश्रूश्वशुरहस्तगम्।

विधवाप्तुं न शक्ता सत्त्वामिदत्ताधिपैव हि॥ 111॥

111. A widow has no power to receive property acquired by her deceased husband which may be in the hands of her mother-in-law and father-in-law. She is the mistress of all the property given to her by her husband.

NOTE:—What has been given away to the father-in-law and the mother-in-law by the husband, cannot be re-covered after his death.

अपुत्रपुत्रमरणे तदद्व्यं लाति तद्वधूः।

तन्मृतौ तस्य द्रव्यस्य श्वश्रुः स्यादधिकारिणी॥ 112॥

112. When the son dies sonless his estate is taken by his widow; on her death, it is taken by her mother-in-law.

रमणोपार्जितं वस्तु जंगमं स्थावरात्मकम्।

देवयात्राप्रतिष्ठादिधर्मकार्ये च सौहृदे॥ 113॥

श्वश्रूसत्वे व्ययीकर्तुं शक्ता चेद्विनयान्विता।

कुटुम्बस्य प्रिया नारी वर्णनीयान्यथा न हि॥ 114॥

113-114. From the husband's property, movable and immovable, the daughter-in-law has power to spend for processions and establishment of Gods, and the like religious works, and for making affectionate gifts to kindred, if being praiseworthy, she is modest and loved by the kindred and not otherwise.

अनपत्ये मृते पत्यौ सर्वस्य स्वामिनी वधूः।

सापि दत्तमनादाय स्वपुत्रीप्रेमपाशतः॥ 115॥

ज्येष्ठादिपुत्रदायादाभार्षं पंचत्वमागता।

चेत्तदा स्वामिनी पुत्रं भवेत्सर्वधनस्य च॥ 116॥

तन्मृतौ तद्वधुः स्वामी। तन्मृतौ तत्सुतादयः।

पितृपक्षीयलोकानां नीहे तत्राधिकारिता॥ 117॥

115-117. On the husband dying sonless, the widow is mistress of all his property. If she, out of affection for her own daughter, does not adopt a son and dies leaving preferential heirs, like the son of the husband's elder brothers and others, her daughter becomes mistress of the entire estate. If she dies, her husband takes the estate; when he dies, her sons and the like take. The members of her father's family have no right.

जामाता भागिनेयश्च श्वश्रूश्चैव कथंचन।

नैवेतेऽत्र हि दायादः। परगोत्रत्वभावतः॥ 118॥

118. The son-in-law, the sister's son and the mother-in-law are never heirs, because they are of a different *Gotra*.

साधारणं च यदद्रव्यं तदभ्राता कोऽपि गोपयेत्।

भागयोग्यः स नास्त्येव दण्डनीयो नृपस्य हि॥ 119॥

119. If one brother conceals any common property, he becomes unworthy of a share any further and liable to punishment by the king.

सप्तव्यसनसंसक्ताः सोदरा भागभागिनः।

न भवन्ति च ते दंड्या धर्मभ्रंशेन सज्जनैः॥ 120॥

120. Brothers addicted to the seven grievous vices are not entitled to shares, because they are fit to be punished by the good persons on account of having fallen from Dharma.

गृहीत्वा दत्तकं पुत्रं स्वाधिकारं प्रदाय च।
तस्मादात्मीयवित्तेषु स्थिता स्वे धर्मकर्मणि॥ 121॥
कालचक्रेण सोऽनूदृशचेन्मृतो दत्तकस्ततः।
न शक्ता स्थापितुं सा हि तत्पदे चान्यदत्तकम्॥ 122॥

121-122. Having taken a son in adoption and having given him the right to property in her husband's estate, if the widow is leading the life devoted to the works of her own religion, and the said adopted son dies unmarried in course of time, she has no power to establish another adopted son in his place.

जामातृभागिनेयेभ्यः सुतायै ज्ञातिभोजने।
अन्यस्मिन् धर्मकार्ये व इष्टात्स्वं स्वं यथारुचि॥ 123॥

123. She may spend the property by giving it to the son-in-law, the sister's son or the daughter or in feeding the Agnates or in other religious works, as she likes.

युक्तं स्थापयितुं पुत्रं स्त्रीयभर्तृपदे तथा।
कुमारस्य पदे नैव स्थापनाज्ञा जिनागमे॥ 124॥

124. She can establish an adopted son in the place of her husband but there is no ordinance in the Jaina Law by which she can establish a son in the place of her deceased son.

विधवा हि विभक्ता चेद्विधायं कुर्याद्यथेच्छया।
प्रतिषेद्धा न कोऽप्यत्र दद्यादश्च कथंचन॥ 125॥

125. The widow, when separated, can spend as she likes and no other heirs can prohibit her from doing so.

अविभक्ता सुताभावे कार्य्ये त्वावश्यकेऽपि वा।

कर्तुं शक्ता स्ववित्तस्य दानमाधिं च विक्रयम्॥ 126॥

126. When she is undivided, and has no son, she can make a gift, mortgage or sale of the property for necessary purpose.

वाचा कन्यां प्रदत्वा वेत्पुनर्लोभे ततो हरेत्।

स दंड्यो भूभृता दद्याद्द्वरस्य तद्धनव्यये॥ 127॥

127. When having betrothed a maiden daughter by word of mouth, one takes her away, out of covetousness, from the bridegroom to whom she had been betrothed and marries her to another, he should be punished by the king and should return to the said bridegroom all he might have spent.

कन्यामृतौ व्ययं शोध्दं देयं पश्चाच्च तद्धनम्।

मातामहादिभिर्दत्तं तद्गृह्णन्ति सहोदराः॥ 128॥

128. If a betrothed daughter dies before marriage, the wealth given to her (after deducting all expenses) should be returned to the bridegroom. What had been given to her by the mother's father and the like should be taken by her uterine brothers.

निहनुते कोऽपि चेज्जाते विभागे तस्य निर्णयः।
लेख्येन बन्धुलोकादिनाक्षिभिर्भिन्नकर्मभिः॥ 129॥

129. How is a doubt, raised as to partition, should to be removed! It should be determined by documents, relations and witnesses and in other ways.

अविभागे तु भ्रातॄणां व्यवहार उदाहृतः।
एक एव विभागे तु सर्वः संजायते पृथक्॥ 130॥

130. When there is no partition, the transaction of brothers are joint. If one separates, the separation of all arises.

भ्रातृवद्विधवा मान्या भ्रातृजाया स्वबन्धुभिः।
तदिच्छया सुतस्तस्य स्थापयेद्भ्रातृके पदे॥ 131॥

131. The widow of a brother should be respected like the brother by good kinsmen and at her desire an adopted son to him should be established in the place of the deceased brother.

यत्किञ्चिद्वस्तुजातं हि स्वराभाभूषणादिकम्।
यस्मै दत्तं च पितृभ्यां तत्तस्यैव सदा भवेत्॥ 132॥

132. Whatever has been given to a coparcener by his parents such as his wife's ornaments and the like belongs to him exclusively.

अविनाश्य पितुर्द्रव्यं भ्रातॄणां सहायतः।
हृतं कुलागतं द्रव्यं पिता नैव यदुद्धतम्॥ 133॥

तदुद्धृत्य समानीतं लब्धं विद्याबलेन च।
 प्राप्तं मित्राद्विवाहे वा तथा शौर्येण सेवया॥ 134॥
 अर्जितं येन यत्किञ्चित्तत्स्यैवाखिलं भवेत्।
 तत्र भागहरा न स्युरन्ये केऽपि च भ्रातरः॥ 135॥

133-135. Whatever is acquired by a coparcener without detriment to the father's property and without the help of the other brothers; whatever ancestral property, which had been lost and not recovered by the father, is recovered by a coparcener; whatever is acquired by learning or received from friends at marriage, or acquired by valour or service, all that belongs to him, the acquirer. In that none of the other brothers can be a sharer.

विवाहकाले वा पश्चात्पिता मात्रा च बन्धुभिः।
 पितृव्यैश्च बृहत्स्वसा पितृष्वसा तथा परैः॥ 136॥
 मातृष्वसादिभिर्दत्तं तथैव पतिनापि यत्।
 भूषणांशुकपात्रादि तत्सर्वं स्त्रीधनं भवेत्॥ 137॥

136-137. Whatever ornaments, clothes, vessels and the like are given to a woman, at the time of marriage or subsequently by the father, mother, kinsmen, father's brothers, elder sister, father's sister or others, or by mother's sister and the like or by the husband, all these are her *Stridhana*.

विवाहे यच्च पितृभ्यां धनमाभूषणादिकम्।

विप्राग्निसाक्षिकं दत्तं तदध्याग्निकृतं भवेत्॥ 138॥

138. Whatever wealth, ornaments and the like are given to a woman by her parents at the time of marriage, witnessed by Brahmanas witnesses and fire, become *Adhyagni* (*Stridhana*).

पुनः पितृगृहाद्वध्वाऽऽनीतं यदभूषणादिकम्।

बंधुभ्रातृसमक्षे स्यादध्याहवनिकं च तत्॥ 139॥

139. Again, whatever ornaments and the like are given when a bride is being carried from her father's house, in the presence of brothers and kinsmen are called *Adhyahavanika*.

प्रीत्या स्नुषायै यद्वत्तं स्वश्रुवा च स्वशुरेण च।

मुखेक्षणांघ्रिनमने तद्वत्तं प्रीतिजं भवेत्॥ 140॥

140. Whatever is given to the daughter-in-law out of affection by the father-in-law or mother-in-law at the time of the ceremony of beholding the face or at the time of the touching of the feet by her is called gains of amiability.

पुनर्भ्रातुः सकाशाद्यत्प्राप्तं पितृगृहात्तथा।

ऊढया स्वर्णरत्नादि तत्स्यादौदयिकं धनम्॥ 141॥

141. Again, whatever gold, gems and the like are received from a brother or from the father's house by a married woman is her (*Stridhana*) wealth.

**SELECTIONS FROM
THE JAINA LAW
(PART III)**

परिक्रमणकाले यदत्तं रत्नांशुकादिकम्।

जायापतिकुलस्त्रीभिस्तदन्वाधेयमुच्यते॥ 142॥

142. Whatever gemz, silk clothes and the like or given by a married couple or women of good family at the time of taking the bride round the bridegroom is called *Anvadheya*.

एतत्स्त्रीधनमादातुं न शक्तः कोऽपि सर्वथा।

भागानामर्हं यतः प्रोक्तं सर्वैर्नीतिविशारदैः॥ 143॥

143. No coparcener has power to take all these kinds of *Stridhana* because they are declared as not liable to partition by all persons conversant with the law.

धारणार्थमलंकारो भर्त्रा दत्तो न केनचित्।

गृह्यः पतिमृतौ सोऽपि व्रजेत्स्त्रीधनतां यतः॥ 144॥

144. Whatever ornaments had been ordered to be made for the wife for her use by her husband who dies before he has given them to her, cannot be taken by any coparcener on the husband's death because it becomes *Stridhana*.

व्याधौ धर्मे च दुर्भिक्षे विपत्तौ प्रतिरोधके।

भर्तानन्यगतिः स्त्रीस्वं ज्ञात्वा दातुं न चार्हति॥ 145॥

145. A husband is not liable to make good the property of his wife taken by him while having no other means, in illness, for religious purposes, in famine, in distress or while under restraint.

सम्भवेदत्र वैचित्र्यं देशाचारादिभेदतः।

यत्र यस्य प्रधानत्वं तत्र तद्वलवत्तरम्॥ 146॥

146. There is diversity (in rules of Law) on account of differences in customs of countries and the like; whatever custom that is considered as pre-eminent in a country is of force there.

इत्येवं वर्णितस्त्वत्र त्रयभागः समासतः।

यथाश्रुतं विपश्चिद्धिर्ज्ञेयोऽर्हन्तीतिशास्त्रतः॥ 147॥

147. Thus has the Law of Partition of Heritage been described concisely, as has been heard. More particular rules should be known from the *Niti Sastras* of the Arhat.

JAINISM AND DR. GOUR'S "HINDU CODE"

APPENDIX-A

It is notorious how certain lawyers and advocates do not hesitate in an emergency to cite over-ruled precedents (rulings); but no one would have imagined that a lawyer of Dr. Gour's standing would be guilty of such a flagrant violation of a lawyer's Code of Honour. In his "Hindu Code" the learned author has made a number of statements about Jainism which are simply astounding and against the conclusions established by scientific research. He regards the Jainas as Hindu dissenters and considers Jainism to be a child of Buddhism. Para 331 of the *Hindu Code* reads as follows:

"Jainism claims to be the precursor of Buddhism, but it is only its child. It is in reality a compromise between Buddhism and

Hinduism, an adaptation made by those who could not receive the new faith, but who nevertheless took refuge in a creed, which, while retaining its traditional connection with Hinduism, has borrowed from Buddhism its doctrines and religious practices. In course of time as Buddhism lost its hold in India, its waning influence continued in Hinduism, relapsed into a form of Hinduism in which it individually became eventually merged and practically lost."

Dr. Gour does not refer to a single Hindu or Buddhist scripture or other ancient writing chronicling the rise of Jainism, nor he is able to point to a single doctrine or practice which Jainism may be accused of borrowing from Buddhism, though he makes the above statement in the paragraph quoted unblashingly. His authorities are :—

- (i) Mount Stuart Elphinstone's *History of India*.
- (ii) Certain rulings of Indian Courts, and
- (iii) The Bengal Census Report for 1881 pp. 87-88.

But these are not contemporary records; and

the rulings certainly do not profess to determine whether Jainism is a child of Hinduism or Buddhism; or *vice versa*. One of them merely refers to the following passage from M. S. Elphinstone's *History of India* as an available piece of information :

".....The Jainas appear to have originated in the sixth or seventh century of our era ; to have become conspicuous in the eighth or ninth century; got to the highest prosperity in the eleventh and declined after the twelfth."

This was, no doubt, the opinion prevalent among early Orientalists who knew very little about Jainism. But all recent researchers are now at one in recognising the fact that it was an error to regard Jainism as an off-shoot of Buddhism. There is no difference or dissent as to this today amongst Orientalists and researchers, whether European or Indian. Prof. T.W. Rhys Davids says;(see "Buddhist India" p. 143) :

"The Jainas have remained as an organised community all through the History of India from before the rise of Buddhism down to to-day."

According to Elphinstone, Jainas appeared to have originated in the sixth century A. D., but Rhys Davids shows that the Jaina canon was reduced to writing in the fourth century B. C. On p. 164 of his *Buddhist India* he says:

"The books purport to be substantially the ones put together in the 4th century B. C. when Bhadrabahu was head of the community."

Elphinstone, however, only said that Jainas appeared to have originated etc., but Dr. Gour is positive that Jainism is only a child of Buddhism. "It is in reality a compromise between Buddhism and Hinduism." What is Dr. Gour's authority for transforming this guarded qualified expression of opinion of an early European thinker into the positive assertion in para 331 of the *Hindu Code* is only known to him; but can he plead ignorance of the conclusions reached since 1881 by impartial research? Dr. T. K. Laddu, a Hindu scholar, in recent times says: "We cannot trace any reliable history of Jainism beyond Vardhamana Mahavira. This much however is certain that Jainism is older than Buddhism and was founded probably by some one, either Parsva nath or some other Tirthankara

who had lived before the time of Mahavira" (see the "Full Text of the Address by Dr. T. K. Laddu" published by the Honorary Secretary, Syadvada Mahavidyalaya, Benares). The late Mahamahopadhyaya Dr. S. C. Vidya Bhusana also maintained:

"It may be held that Indrabhuti Gautama direct disciple of Mahavira whose teachings he collected together, was a contemporary of Buddha Gautama, the reputed founder of Buddhism, and of the Akshapada Gautama the Brahman author of the Nyaya Sutras" (see *The Jaina Gazette Vol. X, No. 1*).

Dr. J. G. Buhler, C. I. E., I.L. D., Ph. D., points out :

"The Buddhists themselves confirm the statements of the Jainas about their prophet. Old historical inscriptions prove the independent existence of the sect of the Jainas even during the first five centuries after Buddha's death, and among the inscriptions are some which clear the Jaina tradition not only from suspicion of fraud but bear powerful witness to its honesty" (see "The Jainas" pp. 22 and 23).

Major-General J.G.R. Forlong, F.R.S.E., F.R.A.S., M.A.D., etc., also writes :

“All Upper, Western, North, Central India was then—say 1500 to 200 B. C. and, indeed, from unknown times—ruled by Turanians, conveniently called Dravids, and given to tree, serpent and phallic worship....., but there also then existed throughout Upper India an ancient and highly organised religion, philosophical, ethical and severely ascetical, viz., Jainism, *out of which clearly developed the early ascetical features of Brahmanism and Buddhism*” (see *Short Studies in the Science of Comparative Religion*, pp. 243-244).

Where is now the claim that Jainas are Hindu dissenters and Jainism a child of Buddhism ? The explanation of the error of the earlier Orientalists is thus given in the latest authority, (*The Encyclopaedia of Religion and Ethics* Vol. VII, p. 465) :—

“Notwithstanding the radical difference in their philosophical notions, Jainism and Buddhism, being originally both orders of monks outside the pale of Brahmanism, present some resemblance in outward appearance, so

that even Indian writers occasionally have confounded them. It is, therefore, not to be wondered at that some European scholars, who became acquainted with Jainism through inadequate samples of Jaina literature easily persuaded themselves that it was an off-shoot of Buddhism. But it has since been proved beyond doubt that their theory is wrong and that Jainism is at least as old as Buddhism. For the canonical books of the Buddhists frequently mention the Jainas as a rival sect, under their old name Nigāntha....., and their leader in Buddha's time, Nataputta (Nata or Natiputta being an epithet of the last prophet of the Jainas, Vardhamana Mahavira), and they name the place of the latter's death* Pava, in agreement with Jaina tradition. On the other hand, the canonical books of the Jainas mention as contemporaries of Mahavira the same Kings as reigned during Buddha's career, and one of the latter's rivals. Thus it is established that Mahavira was a contemporary of Buddha and probably somewhat older than the latter who outlived his rival's decease at Pava: Mahavira.

* This should be Nirvana.

however, unlike Buddha, was probably not the founder of the sect which reveres him as their prophet, nor the author of their religion..... His predecessor Parsva, the last Thirthankara but one, seems to have better claims to the title of the founder of Jainismbut in the absence of historical documents we cannot venture to go beyond a conjecture."

With respect to the next proposition of Dr. Gour that the Jainas have borrowed from Buddhism its doctrines and religious practices, the truth is precisely the opposite of this. It is pointed out by the latest authority (see the "Encyclopaedia of Religion and Ethics " Vol. VII P. 472) :

"A question must now be answered which will present itself to every critical reader viz., Is the *Karma* theory (of the Jainas)..... an original and integral part of the Jaina system? It seems so abstruse and highly artificial that one would readily believe it a later metaphysical doctrine which was grafted on an original religious system based on animistic notions and intent on sparing all living beings. But such a hypothesis would be in conflict with

the fact that this *Karma* theory, if not in all details, certainly in the main outlines, is acknowledged in the oldest parts of the canon and presupposed by many expressions and technical terms occurring in them. Nor can we assume that in this regard the canonical books represent a later dogmatic development for the following reason the terms *asrava*, *samvara*, *nirjara*, etc., can be understood only on the supposition that *Karma* is a kind of subtle matter flowing or pouring into the soul (*asrava*), that this influx can be stopped or its inlets covered (*samvara*) and that *Karma* matter received into the soul is consumed or digested, as it were, by it (*nirjara*). The Jains understand these terms in their literal meaning, and use them in explaining the way of salvation (the *Samvara* of the *Asrava*; and the *Nirjara* lead to *Moksha*). Now these terms are as old as Jainism. For the Buddhists have borrowed from it the most significant term *asravas*; they use it in very much the same sense as the Jainas, but not in its literal meaning, since they do not regard the *Karma* as subtle matter, and deny the existence of a soul into which the *Karma*

could have an influx. It is obvious that with them *asrava* has lost its literal meaning, and that, therefore, they must have borrowed this term from a sect where it had retained its original significance, or, in other words, from the Jainas..... Thus the same argument serves to prove at the same time that the *Karma* theory of the Jainas is an original and integral part of their system, and that Jainism is considerably older than the origin of Buddhism."

If Dr. Gour had taken the trouble to refer to Buddhistic records he would have found Buddha himself referring to the last Tirthankara, Paramatman Mahavira, of the Jainas in the clearest terms:....

"There are, brethren, certain recluses (Achelkas, Ajivikas, Niganthas etc) who thus preach and believe, whatsoever an individual experiences, whether it be happy, or painful, or neutral feeling, all has been caused by previous actions and thus from the cancelling of old actions by *tapas* and by abstaining from doing new actions, there is no influx into future life; by this non-influx *Karma* is destroyed and so ill is destroyed, and so all pain will become

worn away. This, brethren, is what the Niganthas (Jainas) say..... Is it true, I asked them, that you believe and declare this ?They replied.....Our leader Nataputta is all-wise....., out of the depth of his knowledge he tells us : Ye have done evil in the past. This ye do wear away by this hard and painful course of action. And the discipline that here and now by thought, word, and deed, is wrought, is a minus quantity of bad *Karma* in the future life.....thus all *Karma* will eventually be worn away, and all pain. To this we assent" (Majjhima II. 214 ff; cf. I. 238). *The Encyclopaedia of Religion and Ethics* Vol. II. p. 70.

* * * * *

These extracts furnish conclusive evidence of the following facts :

- (i) that Paramatman Mahavira was a real historical being and not a myth; and
- (ii) that He was a contemporary of Buddha.

* * * * *

I think this is sufficient to show the absurdity of the proposition that the Jainas borrowed their doctrines and religious

practices from the Buddhists, that Jainism originated in the sixth century or that it is a compromise between Hinduism and Buddhism.

As for the dictum that the Jainas are Hindu dissenters, neither Dr. Gour nor any one else has a shred of evidence to adduce in support of it. It is a mere assumption grounded on the authority of early European enquirers who understood little if anything at all of religion and whose views about Indian religions including the Vedic Dharma are grotesquely childish and silly. It is true that in the absence of historical documents or inscriptions which do not generally run further back than the 3rd Century B. C. no direct evidence can be had one way or the other, but the intrinsic evidence furnished by the *real* tenets and doctrines of the different faiths is conclusive on the point. This line of research the early investigators were not qualified to pursue, and was not taken up by them.

* * * * *

I have shown in the Appendix to my *Practical Path* which covers 58 pages the true relationship between Jainism and Hinduism, and

have further elucidated the subject in my *Key of Knowledge* (see pages 1068 to 1080 of the 2nd edition) and in my *Confluence of Opposites* (see especially the last Lecture). It is made clear in these works that Jainism is the oldest religion of all and that its principles constitute the foundation of the different systems and schools of thought. Any one who will dispassionately and without prejudice go through my *Confluence of Opposites* and will then read the other references will, I feel sure, not find it in his heart to differ from me on this point. The arguments advanced by those who regard the Jainas as Hindu dissenters may be summed up under the following heads :

- (1) That their doctrines resemble those of the Brahamanas in their character of quietism, tenderness for animal life, transmigration, hells and heavens, attainment of salvation and the means for the same.
- (2) That the caste system is common to both.
- (3) That the Jainas "admit the Hindu gods and worship them though they consider them as entirely subordinate to their own saints."

- (4) That the Jainas have "added to the absurdities of the (Hindu) system," thus they have sixty four Indras and twenty two Devis.

These are the grounds of opinion of Elphinstone which Dr. Gour quotes on pages 180-181 of the *Hindu Code*. But surely they cut both ways, for when certain features are found in common between two systems A and B it cannot be said with certainty that A is necessarily the borrower and not B. It may be that the Jainas borrowed these things from the Hindus, but it is equally possible that the Hindus borrowed the basis of their creed from the Jainas. Mere resemblance obviously does not suffice to determine the point. And so far as the most important of these resemblances, *i.e.*, tenderness for animal life is concerned, I think *ahimsa* can never be said to have been a mark of Hinduism as it is of Jainism whose very motto has all along been *ahimsa paramo dharma* (non-injury is the highest religion). The third point that the Jainas admit Hindu gods and worship them is absurd. It has no foundation of fact. Mr. Elphinstone who probably came

across an instance of two of the kind presumed that Jainism generally admitted Hindu gods. Such spectacles are not uncommon in every religion. To-day Hindus (especially females) worship Mahomedan *stizias* and tombs of men supposed to have been holy. But can we say that because some individuals thus act against the teachings of their religion therefore Hindus are Mohammedan dissenters? The fourth ground is the worst of all. It proceeds on the assumption that the Hindu system is absurd, and then develops the idea that the Jainas have added to its absurdities. To this the Hindus will not, I am sure, readily agree. The truth is that what Mr. Elphinstone regards as an absurd statement is an enumeration of the rulers of Heavens who are termed, *Indras*. Jainism fixes the number of *Indras* in all the heavens as 64 and the number of *devis* (*devangnas*) is also a fixed one. It may be that there are actually no heavens and hells in existence in which case the teaching will be certainly absurd, but the Jainas take it as proceeding from the Tirthankara who is omniscient, and are therefore not likely to be

dissuaded from accepting it on the word of the writer who knows nothing about religion, his own or any one else's.

Now, the Indra that figures largely in the sacred scriptures of Hinduism, is not the ruler of the Heavens but a personification of Life (*Confluence of Opposites*, Lecture V). If Elphinstone and others who hastily jumped to the conclusion that Jainas were Hindu dissenters had taken the trouble to understand the character of the Rig Veda they would have discovered that document was couched altogether in a secret script underlying the apparent Sanskrit or the text*. The moderns are altogether ignorant of this secret script though it is also the real language of the Holy Bible, the Zend Avesta and almost all other scriptures including the Quran. Jainism is, however, not composed in any secret script, and is not mythological in its nature. Now, the argument which proves the priority of Jainism to Hinduism consists in the priority of fact to fiction, that is to say in the priority of

* Vide in addition to the books referred to, also the *Permanent History of Bharat Varsha* and the *Atma Ramayana*.

scientific truth to mythological garb. The point is that both the Jaina Scriptures and the Vedas teach the same thing almost entirely, but the former are couched in plain language and the latter in mystic speech which has to be understood first. I have made this point very clear in the *Confluences of Opposites* and the Appendix to the *Practical Path* and have elucidated it with illustrations from the holy scriptures of the different faiths. Unfortunately Elphinstone knew nothing about the mystery language of his own or any one else's religion and freely talked as he pleased. For long has shown, how Brahmanical asceticism has arisen from Jaina *tapas* (see *Short Studies in Comparative Religion*).

Of the rulings referred to by Dr. Gour, the one in 10th volume of the Bombay High Court Reports pp. 241-267, is the most typical. It was, however, passed in the year 1873 when the early errors were fully current. We must take it that the learned judges were anxious to do justice according to their lights, but the *lights were not good*. They quote Elphinstone's quotation (given in the *Hindu*

Code) on pages 247, 248 and 249, and refer to some other minor works including the accounts given by certain military travellers, and finally consult Rev. Dr. Wilson whom they regard as possessed of "a knowledge of the castes of Western India and their literature and customs, as extensive as that of any other living person whom it would be easy to name." Dr. Wilson's opinion was that he was not aware of any authorities in the books of the Jaina communities or amongst the Hindu writers which would tend to support the custom set up by the plaintiffs and that he was informed by a learned *Jati* of the Jaina communities and his Brahman assistants that they did not know of any such authority, and that adoption was generally regulated by Hindu Law. The High Court also relied upon the fact that in many matters Brahman assistance was sought by the Jains, e.g., in marriage ceremonies. They also refer to Colebrook, Wilson and others who shared Elphinstone's opinion on the same grounds as those already stated. No Jaina works seem to have been produced, though the names of some of them are mentioned, including

Vardhamana (Niti), *Gautama Prasna* and *Poonawachun* (see pp. 255-256). Some of these had actually been cited in a Calcutta case (*Maharaja Govind Naki Roy v. Gulab Chand and others*) in 1833 (see 5 S. D. Rep. 276). This case is also referred to in the Judgment as also the work of Mr. Steel on *Hindu Castes* who shows that the Jains have books of their own which are different from the Brahmanical *Sastras*. But the High Court did not insist on their production and did not send for them of its own accord. The party whom the Hindu Law favoured would not naturally be anxious to assist the Court in this matter and perhaps the opposite side were not so situated as to procure rare hand-written manuscripts of *Sastras* for production in Court. Ah! The modern Judge does not, unlike the despised *Qazi* of old, himself feel called upon to collect the material for his decision; he is perhaps sometimes more critical, but the material has to be placed before him. Those who follow have the light of his ruling to guide them in their decision, and to secure dissent from a pre-existing precedent is by no means an easy task, as every lawyer knows full well!

As for the Jainas themselves, they shut up shop, virtually removing the signboard, when the Mohammedans came. The invaders showed such marked animosity to Jaina religion that they destroyed Jaina temples and scriptures wherever they came across them. The Jainas were generally understood (in reality misunderstood) to be atheists and this probably was the reason why they suffered so much from the hands of the Muslim invaders. Be that as it may, the fact is that the Jainas buried their libraries underground to preserve them, and there the scriptures remained until they were devoured by rats and white ants or crumbled away into dust. Bitter experience in the past made the Jainas look askance at the great foreign power which succeeded the Moghul rule, and it is only within the last 20 years that the Jaina Scriptures have begun to be published in any language. I doubt if a Jaina would even to-day hand over a hand-written *Sastra* from a Jaina temple to an official in the Court, so imbued is he with the spirit of veneration for the *Scripture* and apprehensive of contamination and disrespect for the Word of Law.

The books on Jaina Law are quite independent of the Brahmanical influence, though Brahamanas are sometimes employed by Jainas both to recite their scriptures and to perform certain religious and temporal ceremonies for them.

I do not know what is there in this fact of the employment of Brāhmanas by Jainas that might go to show that they are Hindu dissenters. Is it expected that the two communities that have existed side by side from time immemorial in one and the same country should have had no intercourse between them? The fact is that Hinduism has always been almost exclusively the recruiting ground of Jainism, and that formerly intermarriages between Hindus and Jainas were fairly frequent. The children of such marriages would follow sometimes the one and sometimes the other of the two faiths, and at times their beliefs and practices would combine certain tenets of both of them which could not but be puzzling to the unenlightened foreigner and at times even to a half-witted native. Besides this, in many places Jainas have

been altogether swept away, but the Jaina temples are still to be found there. Brahmana *pujaris* have to be engaged for such temples to keep up the daily worship. All this might not be known to a stranger in the early seventies, but a *Hindu writer of our times* cannot be allowed to plead ignorance of them, especially as it is his duty to study matters before expressing himself in print about them.

It only remains to trace the history, in its early stages, of the view that the Jainas are governed by the Hindu Law except where modified by custom. The case of *Maharaja Govind Nath Roy v. Galah Chand* and others decided by the Presidency Sudder Court in Bengal in 1833 where express mention was made of a "Jain Law" and of "Jain Shastras" has already been referred to. This is probably the earliest reported case of the Jains. I have also already commented at some length, on the case reported in the last Volume of the Bombay high Court Reports on pages 241-267.

The case of *Mstt. Chinnee Bae v. Gutto Bae* decided in 1853 A.D. (S. D. A., N. W. P. 636. ref. to in 6 N. W. P. H. C. R. p. 394) is

the next to claim the attention. In this case it can be seen distinctly how the unfortunate error of regarding the Jainas as Hindu dissenters proved to be the undoing of the Jaina Law, the decision being that it was unnecessary "to refer to the Pundit of the court for an opinion as to Jain Law on a question arising between Jains when his authority as the expositor of a professedly dissenting sect was impugned by one of the parties," leaving it to the plaintiff to establish by any means in her power the exemption of her sect from the orthodox doctrines, which was a question of fact. The significance of the concluding portion of the dictum is this that if there was a concurrent finding of the district courts to the effect that the evidence adduced did not suffice to prove the exemption from the orthodox law the High Court would not go into the question. The decision nevertheless recognized the right of the Jains to "an adjudication of matters in dispute regarding questions of inheritance on their own Shastras." It was also pointed out that the "want of any standard authority for the law of the Jain sect had compelled the court to

have recourse, for the elucidation of the point to the evidence of witnesses."

In the unreported case of *Hoolas Rae v. Bhowani*, decided on the 7th November 1854, (cited in 6. N. W. P., H. C. R., at 396) was again raised the question as to the law which governs the Jainas, the issues framed being, "Does the Saraogi sect observe the Hindu Law or not? If they do not observe Hindu Law, does their law allow a widow to alienate real property left by her husband? According to the rules of the Saraogi sect has a widow absolute control or only a life interest in the property?"

Enquiries were instituted and again the existence of Jaina Sastrias came to be known to the presiding judge through the mouths of certain witnesses examined on commission at Delhi; but in the High Court exception was taken to the statements of these witnesses on the ground that they had deposed without being put on oath. The case was accordingly remanded to the first court for retrial, but was settled by private arbitration. The point of importance for the Jaina Law is however there in the judgment which records : "*In religious*

matters the Saraogis observe the rules prescribed by their own Dharma Shastras."

The next case to claim our attention is of the year 1860 (*Murnoo Lall v. Gokul Pershad*, reported in S. D. A., N. W. P. Rep. 1860 page 263 (cited in 6, N. W. P. H. C. R. 395.) In this case it was at first ruled that "the question of inheritance between the parties who were Saraogis should be *decided by the Jain Law*, which should be ascertained on the best evidence procurable." and the suit was remanded for a retrial when it again went up to the High Court it was admitted by both parties that "*the Saraogi sect have no scriptures religious or legal whereby such points could be authoritatively decided*"! *Alas for the Jaina Scriptures!* The Hindu lawyers who conducted the case happened, thanks to the Jaina practice of hiding their books, to be totally ignorant of the Jaina Scriptures! and the Jainas were not disturbed in their profound slumber even then!

The next important case is that of *Behari Lal v. Sukhbasi Lal*, which was decided in 1865. In this case it was held that "families

of Jain sect are not bound by the Hindu Shastras". In the later case of *Shimbhu Nath v. Gyan Chand* (I. L. R. 16 All. 379-383) it was said with reference to this passage that the view would be correct where a custom was proved clearly to exist at variance with the Sastras, and that in the absence of such a custom the rules of Hindu Law would be applicable.

The next case comes from Bengal (*Prem Chand Pepara v. Hular Chand Pepara*, 12 W. R. 494). In this case also there is a mention of the Jaina Sastras in the judgment, the court holding that there was no authority "either in the Hindu Law or in the Jain Sastras to support the position that a father is obliged to support a grown up son." No doubt the case is not the same as that where an affirmative proposition is established that a certain text is to be found in a certain work, but it is significant that the court did not hold that there were no Jaina Sastras or that the parties were governed by Hindu Law.

In 1873 again we find in an unreported case (*Heera Lal v. Mohun and Mst. Bhairo*, referred to in 6 N. W. P. H. C. Rep. 398-400) the

existence of a separate Jaina Law being recognized by the court of first appeal which held that the case "fell to be decided by the law of the Jains and that the Hindu Law was no more applicable to Jains than to European Deists."

But in the High Court events shaped themselves differently. The learned Judges state in their judgment: "It was not contended by the appellant that the Hindu Law as such was applicable to jains, but that the Hindu Law and Jaina Law did not differ in respect of the interest taken by a widow in her husband's estate." In the end certain issues were remitted to the lower court, including one as to the nature of the widow's estate under the Jaina Law. The Judge of the court of first appeal again held that the jaina widow acquired a full estate with a right of alienation. As usual, the Jaina plaintiff led evidence to show that Hindu Law applied to the case, but the district judge observed, as to this, that the "witnesses admitted on cross-examination that they were unable to cite any case in which it did so and were obliged to admit that they knew of cases where it had not. In

second appeal the High Court held that the evidence was insufficient to establish a departure from the Hindu Law in the case of Jainas, and that the Jaina widow's rights were not different from that of a Hindu widow. They also differed from the District Judge as to the finding of facts and decreed the case.

The case may well be taken to illustrate the nature of the difficulty that a party seeking to establish a custom has to overcome. For another similar decision see *Chhajju Mal v. Kundan Lal*, 70 I. Cases P. 838 (from the Punjab) which is a case of 1922. To-day there is no doubt whatsoever about the nature of the estate taken by a Jaina widow, all the courts now being agreed that she takes an absolute and an alienable estate. Alas! the evidence adduced by the defendant in the case under consideration was found to be insufficient to establish a special custom although some instances had been cited in support of it and none against its prevalence.

Such was the prevailing atmosphere and such the state of the law about the time when the Privy Council were called upon to determine

the point in 1878 in the famous case of *Sheo Singh Rai v. Mst. Dakho* (reported in I. L. R. I All. p. 688). The case is now an authority, as all Privy Council decisions justly are. It was fought out in the court at Meerut, and a first appeal was preferred to the High Court at Allahabad, whose judgment is reported in the 6th Volume of the N. W. P. High Court Reports on pages 382 to 412. The plaintiff (a Jaina widow from Delhi) sued for certain declarations with regard to her absolute power over the estate inherited by her from her deceased husband as well as to her right to adopt a son without any one's authority or consent. The defence was a denial of the claim based on the plea that the law of the Jainas was not different from that known as Hindu Law. The suit was dismissed first of all by the trial court on a technical ground, but was remanded on appeal to the High Court who were invited by the pleaders of the parties to issue instructions to the lower court for its proper disposal. In the course of these instructions the learned judges said, amongst other things, that Jains have no written law of inheritance"

and that their law could be ascertained only by investigating the customs which prevail among them. The subordinate judge faithfully carried out these directions and at the end of a long trial decreed the case. On appeal the High Court laboriously and painstakingly reviewed all that was known of the case law upto the time of their judgment, and gave their decision which was, perhaps, the only possible one under the circumstances. It may be stated at once that the judgment is in accordance with the Jaina rule of law, and on that basis no one can complain of it. But it is the grounds of the judgment and the effect it has had and is likely to have on the important questions involved as touching the existence and the independence of the Jaina law which are the serious matters. There are two fundamental errors of fact committed by the High Court in this regard. The first is the assumption that the Jainas had for upwards of 11 or 12 centuries seceded from the creed of the *Vedas* which was the outcome of the hasty investigation of the early European scholars whose views are now repudiated by every true student of Oriental

Research (Vide the *Encyclopaedia of Religion & Ethics* Vol. VII Page 465). This view was accepted in the case of *Bhagwan Das Tejmal v. Rajmal* (10 Bom. H. C. Rep. 241) on the authority of Elphinstone's *History of India* and other material then available, and repeated in certain subsequent rulings already noted. The point of error consists chiefly in the view that Jainism arose as an off-shoot of Buddhism in the 6th Century A.D. and began to decline in the twelfth. But as already stated this is quite an exploded theory to-day.

The other error consisted in the statement that there were no Jaina Sastras. To-day we would simply laugh at it ; Fifty years back it would have perhaps been justified, but for the actual mention of the names of certain of the Sastras in some cases. This might have led the court to pause, but it must be conceded that the learned Judges had done their best to make an exhaustive enquiry, and if the Jaina Law even then remained conspicuous by its absence in courts it was scarcely to be expected that they would go on waiting indefinitely for its appearance! The Jainas themselves must be

prepared to bear the blame for failure of justice in this respect. Let it not be forgotten that the third issue framed in the case was : 'By what Shastras or text books are Jains governed ? 'It was open to the parties to prove the existence of the Jaina Law under this issue with the greatest ease, but one side were blinded by the lust of gain, and the other had to face all the difficulties of the Jaina superstition that has not yet fully allowed the production of the Sastras in court.

In the Privy Council the learned counsel who argued the case could hardly be expected to be better informed as to the existence of the Jaina Law, and the respondents' counsel, who had the concurrent findings of the Indian courts in his favour, would be under no necessity to make a departure from the straight course of duty to champion its cause ! As for the other side's counsel he would be going against the interest of his client if he asserted the independence of a Jaina Law contrary to the written statement. The discussion was therefore mainly confined to certain general principles affecting customary law and the quantum of

evidence required in proof of a custom. Nevertheless their Lordships make some important observations on the right of the Jainas to be governed by their own laws and usages. On page 702 they observe :—

“Their review of these previous decisions led the judges (of the High Court) to the conclusion that they were not opposed to the view that the Jains might be governed as to some matter by special laws and usages, and that, where these were satisfactorily proved, effect ought to be given to them. The learned counsel for the appellant who argued the case at their lordships bar felt himself unable to dispute the correctness of this conclusion. It would certainly have been remarkable, if it had appeared in India, where, under the system of laws administered by the British Government, a large toleration is, allowed to usages and customs differing from the ordinary law, whether Hindu or Muhammadan, the courts had denied to the large and wealthy communities existing among the Jains, the privilege of being governed by their own peculiar laws and customs, when these laws and customs were, by sufficient evidence,

capable of being asserted and defined, and were not open to objection on grounds of public policy or otherwise."

Thus was passed the decision which has since been cited as a precedent in all Indian courts whenever the question arises, between parties professing Jain religion, concerning the laws by which they are governed. Needless to say that the pronouncements of the Privy Council are invested with the highest authority which they undoubtedly justly deserve, as emanating from a board consisting of some of the most eminent lawyers in the world it is needless also to add that their lordships, who are never slow to recognize the merit of a point, will on a future occasion give full consideration to the new and additional facts that have been discovered or established since the date of their decision in *Sheosingh Rai v. Mst. Dakho*, on the new material being properly placed before them in the due process of law.

To sum up, the theory that the Jainas are governed by Hindu law rests on the assumption that the Jainas are Hindu dissenters. But on what

does this assumption itself rest ? On nothing more or less than the lingering effect of an erroneous impression created by ill-equipped early scholars who took the Jainas to have originated about the 6th Century A.D. a time when Buddhism was declining and the prevailing religion was Hinduism. The error is gone now; Jainism is regarded by Jacobi and other famous scholars of the day to have been in existence for over 2700 years past, but the Jainas have not been emancipated from their dissentership yet. 'If not a branch of Buddhism, you might well be a dissenting sect of Hinduism !' is the dictum of the learned today. As for the evidence to prove this new assumption, well the word of a learned man needs it not ! The intrinsic evidence is all the other way and is actually supported by the verdict of a man of learning who after years of toil discovered the astonishing truth (*Short Studies in the Science of Comparative Religion* by Major General Forlong).

There are three possible views of the relationship between Jainism and Hinduism, namely :

- (1) that the former is the child of the latter,
- (2) that the latter is the child of the former,
and
- (3) that the two are parallel creeds which have
existed side by side, without the one being
an off-shoot of the other.

Of these, the first is a pure assumption and not supported by any evidence, intrinsic or extrinsic; the second, rests on intrinsic evidence and proceeds on the basis of the Vedas having an esoteric, that is to say, allegorical, interpretation, and the third is the only remaining alternative which will hold good if the allegorical exegesis is to be disaffirmed for any adequate reason. Unfortunately the scholars have been altogether ignorant of the exegetical side of the question and entirely unaware of the esoteric interpretation of the Vedic text, though the point has been developed in some of the books already referred to, e.g., *The Key of Knowledge*, *The Practical Path* and *The Confluence of Opposites*. However, if we reject the allegorical aspect of the question, we shall be left with a Hinduism that has absolutely nothing in

common with Jainism in respect of anything that may be regarded as an essential of faith, so that the two become different and divergent streams, though sharing the same form of social order and mode of living.

As for the Jaina Law, the books presented are not forgeries. There is even a mention of some of them in an instance or two among the earliest cases, though it is by no means the fault of our courts if they have remained unrecognized hitherto. The Jainas, too, have not abandoned their faith, nor embraced Hinduism; they have not yet adopted the Hindu Law. The tolerant policy of the British administration that all sects and creeds are to be governed by their own laws, as enunciated by Sir Montague E. Smith (in *Sheo Singh Rai v. Mst. Dakho*) is still the guiding policy of the courts. Is it, then too much to hope that the earliest opportunity will be taken to rectify the serious error that has been committed unconsciously in the name of Justice and Law?

TABLE OF CASES

APPENDIX-B

A.

- Amava v. Mahadganda*, (22 Bombay, 416)
Ambahai v. Govind, (I.L.R., 26 Bombay, 257)
Anima Kanna v. Appa, (11 Madras, 91)
Asharfi Kunwar v. Rupchand, (I.L.R., 30 Allahabad, 197)

B.

- Bachehi v. Makhan Lal*, (I.L.R., 8 Allahabad, 55)
Beharilal v. Sukhbasilal, [1862 unreported, cited in Select-Cases (Oudh) page 34, and in 6 N.W.P. H.C., Rep. 382/398.]
Bhagwandass Tejmal v. Rajmal, (10 Bombay High Court Report, pages 241, 249, 256 and 256)
Bishenchand v. Asanida, (I.L.R., 6 Allahabad 560 especially at 574-575 P.C.)

C.

- Chengana v. Maniswami*, (20 Madras, 75)
Chhajju Mal v. Kundan Lal, [170 I. Cases P. 838 (from the Punjab)]
Chotay Lal v. Chunnoo Lal (I.L.R., 4 Calcutta, 744 P.C.)

D.

- Doorga Pershad v. Mst. Kunaka Koer*, (21 W.R. at 214 et seq.)

G.

- Ganpat v. Gopal Rao*, (23 Bombay, 636)

Ghisanmal v. Harakchand, 1 (Oudh) Select Cases (No. 43) P. 34.]

Govindnath Roy v. Gulab chand, (5 Select Rep. S.D. Bengal, page 276)

H

Harnabh Pershad v. Maudit Kass, (I.L.R., 27 Calcutta 379)

Hassan Ali v. Nagamal, (1 Allahabad, 288)

Heera Lal v. Mahant and Mst. Bhairo, (6. N.W.P., H.C. Rep. 398-400)

Homabauer vs. Punjeabbee, (5 W.R. 102 P.C.)

Hoolas Rae v. Bhowani, (6 N.W.P., H.C.R. at 396)

Hulan Rai v. Bhawani [1864 unreported], cited in Select Cases (Oudh) Page. 34]

I

Jamunabai v. Juharnal, (56. I.C. 81)

Jeoraj v. Sheo Kuar, (66 I.C. 65)

L

Lakshmi Chand v. Gattobai, (I.L.R., 8 Allahabad, 319)

M

Madanji v. Tribhawan, (36. Bombay, 396)

Madanji Devchand v. Tribhawan Virchand, (12 I.C. 892-13 Bombay L.r. 1121)

Mahabeer Pershad v. Mussamat Kundan Koer, (8 Weekly Reporter page 116)

Maharaja Govind Nath Roy v. Gulab Chand and others (5 S.D. Rept. 276)

Manakchand v. Munna Lal, (95 P.R. 1909-4. I.C. 844)

Mandit Kuer v. Phool Chand, (2 Calcutta Weekly Notes 154)

Manik Chand Golecha v. Jagat Sethani Prati Kumari Bibi, (I.L.R., 17 Calcutta 518)

- Manohar Lal v. Banarsi Dass*, (I.L.R., 29 Allahabad 495)
Mojilal v. Mst. Goribahu, [Second Appeal No. 416, S.B. 1897 Nagpur] referred to in 78 Indian Cases page 461.]
Mst. Chinnee Bacc v. Gutto Bacc, (S.D.a., N.W.P. 636 referred to in 6 N.W.P., H.C.R. page 394).
Munnou Lal v. Gokul Pershad, [reported in S.D.A., N.W.P., Rep. 1860 page 263 (cited in 6 N.W.P., H.C.R. 396)]
Mussamat Sano v. Mst. Indranibahu, (78 Indian Cases page 461. Nagpur)

P

- Parshotam v. Venichand*, (23 Bombay L.R.I.C. 492)
Periammani v. Krishnasami, (I.L.R., 16 Madras, 182)
Premchand pepara v. Hulaschand pepara, (12 Weekly Reporter)

R

- Rithchurn Lalla v. Soojun ull Kallah*, (9 Madras Jur. 21)
Rukhah v. Chunnī Lal Ambushat, (I.L.R., 16 Bombay 347)
Rupchand v. Jambu Pershad, (I.L.R., 32 Allahabad 247 P.C.)

S

- Sheo Kuar Bai v. Jeo Raj*, (25 C.w.N. 273 P.C.)
Sheo Singh Rai v. Mussamat Kukho, 6 N.W.P., H.C. Rep. 382 and (I.L.R., 1 Allahabad 688)
Shimbu Nath v. Gyan Chand, (I.L.R., 16 Allahabad 379-383)
Somchandso v. Motilalsa, (Indore High Court, Original case No. 6 of 1914)
Sunderji Damji v. Dahibai, 4 I.L.R., 29 Bombay 316 6 Bombay, L.R. 1052)

Z

- Zankuri v. Budhmal*, (57 Indian Cases 252)



handa Munirāja addressing the Judges and Lawyers on the Jaina Law at the B
Indore on 30th October 1979.)



॥ जयदु सुद-देवदा ॥

HOLY BLESSINGS
OF
ĀCĀRYA VIDYĀNANDA MUNIRĀJA
who is
all-life saviour, compassionate
and
A Venerable Digambara Saint



Tīrthaṅkara Vardhamāna Mahāvīra
Digambara Jaina Atiśaya Kṣetra Śrī Mahāvīraji
Rajasthan